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OF

THE CONGRESS OF THE UNITED STATES.

TENTH CONGRESS—FIRST SESSION.

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GEORGETOWN COLLEGE KY

THE

DEBATES AND PROCEEDINGS

IN THE

CONGRESS OF THE UNITED STATES;

WITH

AN APPENDIX,

CONTAINING

IMPORTANT STATE PAPERS AND PUBLIC DOCUMENTS,

AND ALL

THE LAWS OF A PUBLIC NATURE;

WITH A COPIOUS INDEX.

TENTH CONGRESS—FIRST SESSION.

COMPRISING THE PERIOD FROM OCTOBER 26, 1807, TO APRIL 25, 1808, INCLUSIVE.

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PROCEEDINGS AND DEBATES

OF

THE SENATE OF THE UNITED STATES,

AT THE FIRST SESSION OF THE TENTH CONGRESS, BEGUN AT THE CITY OF WASHINGTON, MONDAY, OCTOBER 26, 1807.

A PROCLAMATION

By the President of the United States of America.

Whereas great and weighty matters claiming the consideration of the Congress of the United States form an extraordinary occasion for convening them, I do by these presents appoint Monday the twenty-sixth day of October next for their meeting at the City of Washington; hereby requiring the respective Senators and Representatives then and there to assemble in Congress, in order to receive such communications as may then be made to them, and to consult and determine on such measures as in their wisdom may be deemed meet for the welfare of the United States.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed, and signed the same with my hand.

Done at the City of Washington, the thirtieth day of July, in the year of our Lord one thousand eight hundred and seven, and in the thirty-second year of the Independence of the United States.

[L. S.]

TH. JEFFERSON.

By the President:

JAMES MADISON, *Secretary of State.*

MONDAY, October 26, 1807.

Conformably to the above Proclamation of the President of the United States, of the 30th July last, the First Session of the Tenth Congress commenced this day, at the City of Washington, and the Senate assembled, in their Chamber, in the Capitol.

PRESENT:

GEORGE CLINTON, Vice President of the United States, and President of the Senate.

NICHOLAS GILMAN, from New Hampshire.

JOHN QUINCY ADAMS and TIMOTHY PICKERING, from Massachusetts.

BENJAMIN HOWLAND, from Rhode Island.

STEPHEN R. BRADLEY, from Vermont.

SAMUEL L. MITCHILL, from New York.

JOHN CONDIT and AARON KITCHEL, from New Jersey.

SAMUEL MACLAY and ANDREW GREGG, from Pennsylvania.

SAMUEL WHITE, from Delaware.

SAMUEL SMITH and PHILIP REED, from Maryland.

JAMES TURNER, from North Carolina.

THOMAS SUMTER, from South Carolina.

JOHN MILLEDGE, from Georgia.

BUCKNER THRUSTON, from Kentucky.

JOSEPH ANDERSON and DANIEL SMITH, from Tennessee.

JESSE FRANKLIN, appointed a Senator by the Legislature of the State of North Carolina, for the term of six years, commencing on the fourth day of March last; GEORGE JONES, appointed a Senator by the Executive of the State of Georgia, to fill the vacancy occasioned by the death of ABRAHAM BALDWIN; NAHUM PARKER, appointed a Senator by the Legislature of the State of New Hampshire, for the term of six years, commencing on the fourth day of March last; JONATHAN ROBINSON, appointed a Senator by the Legislature of the State of Vermont, to supply the place of ISRAEL SMITH, whose seat has become vacant; and EDWARD TIFFIN, appointed a Senator by the Legislature of the State of Ohio, for the term of six years, commencing on the fourth day of March last, respectively took their seats, and produced their credentials, which were read; and the oath prescribed by law was administered to them.

JOHN POPE, appointed a Senator by the State of Kentucky, for the term of six years, commencing on the fourth of March last, stated that the Governor and Secretary being absent when he left home, he came to the seat of Government without his credentials; but that he expected they would be speedily forwarded to him: whereupon, he took his seat in the Senate, and the oath was administered to him as the law prescribes. The oath was also administered to Messrs. BRADLEY, GREGG, MILLEDGE, and REED, their credentials having been read and filed during the last session.

Ordered, That the Secretary acquaint the House of Representatives that a quorum of the Senate is assembled, and ready to proceed to business.

Ordered, That Messrs. ANDERSON and BRADLEY be a committee on the part of the Senate, together with such committee as the House of Rep-

resentatives may appoint on their part, to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled, and ready to receive any communications that he may be pleased to make to them.

On motion, it was

Resolved, That each Senator be supplied, during the present session, with three such newspapers, printed in any of the States, as he may choose; provided that the same be furnished at the usual rate for the annual charge of such papers; and provided, also, that if any Senator shall choose to take any newspapers, other than daily papers, he shall be supplied with as many such papers as shall not exceed the price of three daily papers.

On motion, it was

Resolved, That JAMES MATHERS, Sergeant-at-Arms and Doorkeeper to the Senate, be, and he is hereby, authorized to employ one Assistant and two horses, for the purpose of performing such services as are usually required by the Doorkeeper to the Senate; and that the sum of twenty-eight dollars be allowed him, weekly, for that purpose, to commence with, and remain during the session, and for twenty days after.

On motion, it was

Resolved, That two Chaplains, of different denominations, be appointed to Congress during the present session, one by each house, who shall interchange weekly.

Ordered, That the Secretary desire the concurrence of the House of Representatives in this resolution.

A motion was submitted, by Mr. ANDERSON, for consideration, as follows:

Resolved, That a committee be appointed to take into consideration the expediency of authorizing the State of Tennessee to reduce the price of certain lands which were ceded to the said State by the United States, by an act, entitled "An act authorizing the State of Tennessee to issue grants and perfect titles to certain lands therein described, and to settle the claims to vacant and unappropriated lands within the same, to such price as the Legislature of said State may, in their judgment, deem expedient; and that the committee have leave to report by bill or otherwise.

A message from the House of Representatives informed the Senate that a quorum of the House of Representatives is assembled, and have elected JOSEPH B. VARNUM, one of the Representatives for Massachusetts, their Speaker, and are ready to proceed to business. They have appointed a committee on their part, jointly, with the committee appointed on the part of the Senate, to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled, and ready to receive any communications that he may be pleased to make to them.

The Senate adjourned to 11 o'clock to-morrow morning.

TUESDAY, October 27.

Mr. ANDERSON reported, from the joint committee, that they had waited on the President of the United States, agreeably to the resolution of yesterday, and that the President informed the committee that he would make a communication to the two Houses this day, at 12 o'clock.

The PRESIDENT communicated the petition of Samuel Biddle and others, American citizens, impressed on board His Britannic Majesty's ship Wolverine; and the petition was read.

Ordered, That it be communicated to the House of Representatives.

BRITISH AGGRESSIONS.

The PRESIDENT also communicated the declaration of the American citizens on the Mobile, with relation to British aggressions; which was read, and ordered to lie on the table.

It is as follows:

At a meeting of the inhabitants of Washington county, Mississippi Territory, at the court-house in the town of Wakefield, on the 8th of September, 1807, in consequence of the attack by the British ship-of-war Leopard on the United States' frigate Chesapeake, the following declaration of the sentiments of the meeting was unanimously adopted:

Situated in a remote corner of the territory of the United States, and unconnected with every other body of American citizens, the people inhabiting the country lying on the waters of the Mobile have at length heard of the outrage which has been committed on our national rights by the arrogant representatives of British despotism. We think and feel on the occasion as every American thinks and feels. We despise the bully and the coward who, as Captain of the Leopard, was the instrument of exhibiting the enormous extent of the claims of the pretended mistress of the ocean. But our attention is in an instant drawn from him to ourselves and our own situation. Is national independence a dream? Shall Great Britain or any other nation come at pleasure into our territory, and lay hold of whomsoever she pleases, under the pretence that this man is her subject, and that man is in her employ; that here there is a felon, and there a deserter? Our national ships are our territory, in whatever quarter of the world they are found; much more so, then, when within our own acknowledged limits and jurisdiction. We care not who the men were that were demanded from the Chesapeake; we care not whence they came, where they were born, nor who claimed allegiance from them. Had they fled from Europe stained with blood, no foreign force had a right to invade our territory; no foreign officer, civil or military, had a right to exercise his functions within our limits, or to transport the supposed offender to the precincts of a distant tribunal.

If there be a mutual convention between two nations reciprocally to deliver up felons, it is well; but no one nation has a right to force another into such a stipulation. And shall the plea, not of a treason, not of a murder, not of a felony having been committed, but the mere plea of desertion from a service, the tyranny and enormities of which are now arming the whole civilized world against it—shall such a plea be ground sufficient for us to stifle our jealousy of national rights, or to surrender our claims to perfect and unqualified independence?

England may count upon our divisions. She is mistaken. The violence of her conduct has united all America. We judge not only from what we hear, but from what we see among ourselves. Our own settlement originally consisted, and still in a great degree

consists, of those who adhered to England in the Revolutionary war. They were led by principle; their elders taught them that resistance was sinful; and they imbibed from their infancy a deep veneration for their King. But the delusion lasts no longer. We have since seen that King engaged in almost incessant wars on the liberty and happiness of man; whilst the Government which has succeeded his in America has preserved us in peace with all the world, and been pre-eminently occupied in promoting our national prosperity. Old factions are forgotten; we all view with the same sensibility any outrage on the honor of our common country; and old Whigs and old Tories will cordially unite in devoting their lives and fortunes to avenge the wounded dignity of America against the insults and oppressions of any Government upon earth. What may be the immediate issue of an appeal to arms we know not. That knowledge is confined to the Lord of Hosts; and on him, trusting to the justice of our cause, we rely with humble confidence.

But, though the operations and events of war are always uncertain, we can calculate with some confidence that a five years' state of non-intercourse with Great Britain will establish the manufactures of America on a foundation which no return of peace will ever shake. It will render us forever after in a high degree independent of the British manufactures of wool, and still more so of those of cotton. Our planters, too, will hereafter find their market at home; and the British navy, if Britain and her navy should continue to exist, will at length find that her tyranny on the ocean has given commercial independence to those confederated States which British tyranny on the land first led to political independence.

Had we not been told that in the United States the people are divided into parties, some of whom are virulent opposers of the system and measures of the present Federal Administration, we should not have deemed it necessary on this occasion to express our full confidence in the wisdom and patriotism of those to whose executive management our national affairs are entrusted. As to ourselves, we have neither seen nor have we looked for the splendor and pageantry of a monarchy, overstraining the sinews of national strength and industry to support large mercenary armies and unwieldy navies; but we have thought that we have seen the genuine product of republican institutions—a love of peace, a high regard for the ease and happiness of the people, a vigilant attention to public expenditures, and a strong anxiety to promote internal improvements. War will, indeed, open a new theatre for the talents of our rulers; but we have a strong confidence that that intellectual and moral pre-eminence which, amidst the convulsions of the world, has been so conspicuous in peace, will not become extinct on the instant of the appearance of war.

As to ourselves and our own local concerns, it is true we have sometimes feared that we were overlooked in the council of the nation. Our population is small; we are surrounded, except on the Spanish side, by the most powerful tribes of Indians existing within the original limits of the United States. The want of land cuts off from us the prospect of having our strength increased. We had hoped that a treaty entered into with the Choctaws, which, by making a valuable addition to our land, would have invited population, and placed us in a state of greater security and respectability, would have been ratified. But we have been disappointed. Yet, few as we are, we consider ourselves as an advanced guard, destined to defend the immense tract of valuable territory which lies between the settlements on the Mobile and the State of Tennessee. We may perish at our posts, but we shall not slumber there.

We have likewise suffered multiplied injuries, inflicted upon us in a regular system by the agents of the Spanish Government. But if we have ever thought ourselves neglected, such thoughts, at the present momentous crisis in our national affairs, shall no longer find a harbor in our breasts. If, when we have been the objects of incessant oppression from the officers of His Catholic Majesty, for a series of years; if, when the produce of our lands, before it could reach a market in even our own territories, has been subjected to a duty of twelve per centum ad valorem to a foreign monarch; if, when we have been constantly the sport of vexatious searches and arbitrary seizures; if, when we have been compelled to pay twelve per centum to the King of Spain on everything which we have imported, even from the next town within the American limits; if when, through the joint operation of revenue systems of Spain and the United States, we have frequently been obliged to pay from forty-two to forty-seven per centum ad valorem on the price, when first imported into the United States, of the most essential articles for family comfort; if, when suffering, not yesterday or to-day only, but every day and every year, for a length of time, this series of oppressions, without hearing one clear and decided expression of national indignation, we have sometimes, in the spirit of despondency, been ready to fear that we never should be thought worthy of enjoying the rights and protection of American citizens, the moment has now arrived when we feel ourselves called upon to discard our personal jealousies; the moment has now arrived when we shall cease any longer to regard our local grievances, till those of the nation are redressed. We will give to the Spaniard his twelve per centum; we will continue to pay a double price for the commodities of Europe; we will again, if need be, pay sixteen dollars per barrel for the flour of Kentucky, whilst our neighbors at the Natchez, unencumbered by the Spanish obstacles, are paying only four; we will view these things light as compared with a deliberate, and authorized, and systematic violation of our territory by a foreign Power. We will devote ourselves to our country at large, and from this moment cease to seek any other object than permanency to national existence, and reality to national independence.

The charter of that independence was drawn up in 1776; it was ratified by the peace of 1783; but it still cries out for the blood of American citizens to seal it and to give it practical validity. Our blood shall be mingled with that of other Americans in offering the solemn sacrifice.

Resolved, unanimously, That the chairman of this meeting forward to the President of the United States a copy of this declaration, and that he give it such other circulation as he may deem necessary.

PRESIDENT'S ANNUAL MESSAGE.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of
Representatives of the United States:

Circumstances, fellow-citizens, which seriously threatened the peace of our country, have made it a duty to convene you at an earlier period than usual.

The love of peace, so much cherished in the bosoms of our citizens, which has so long guided the proceedings of their public councils, and induced forbearance under so many wrongs, may not insure our continuance in the quiet pursuits of industry. The many injuries and depredations committed on our commerce and navigation upon the high seas for years past, the successive innovations on those principles of public law which have been established by the reason and usage of nations as the rule of their intercourse, and the umpire and security of their rights and peace, and all the circumstances which induced the extraordinary mission to London, are already known to you. The instructions given to our Ministers were framed in the sincerest spirit of amity and moderation. They accordingly proceeded, in conformity therewith, to propose arrangements which might embrace and settle all the points in difference between us, which might bring us to a mutual understanding on our neutral and national rights, and provide for a commercial intercourse on conditions of some equality. After long and fruitless endeavors to effect the purposes of their mission, and to obtain arrangements within the limits of their instructions, they concluded to sign such as could be obtained, and to send them for consideration, candidly declaring to their other negotiators at the same time that they were acting against their instructions, and that their Government therefore could not be pledged for ratification. Some of the articles proposed might have been admitted on a principle of compromise, but others were too highly disadvantageous; and no sufficient provision was made against the principal source of the irritations and collisions which were constantly endangering the peace of the two nations. The question, therefore, whether a treaty should be accepted in that form could have admitted but of one decision, even had no declarations of the other party impaired our confidence in it. Still anxious not to close the door against friendly adjustment, new modifications were framed, and further concessions authorized than could before have been supposed necessary; and our Ministers were instructed to resume their negotiations on these grounds. On this new reference to amicable discussion we were reposing in confidence, when, on the 22d day of June last, by a formal order from a British Admiral, the frigate Chesapeake, leaving her port for a distant service, was attacked by one of those vessels which had been lying in our harbors under the indulgences of hospitality, was disabled from proceeding, had several of her crew killed, and four taken away. On this outrage no commentaries are necessary. Its character has been pronounced by the indignant voice of our citizens with an emphasis and unanimity never exceeded. I immediately, by proclamation, interdicted our harbors and waters to all British armed vessels, forbade intercourse with them; and, uncertain how far hostilities were intended, and the town of Norfolk, indeed, being threatened with immediate attack, a sufficient force was ordered for the protection of that place, and such other preparations commenced and pursued as the prospect rendered proper. An armed vessel of the United States was despatched with instructions to our Ministers at London to call on that Government for the satisfaction and security required by the outrage. A very short interval ought now to bring the answer, which shall be communicated to you as soon as received; then, also, or as soon after as the public interests shall be found to admit, the unratified treaty and proceedings relative to it, shall be made known to you.

The aggression thus begun has been continued on the part of the British commanders, by remaining within our waters in defiance of the authority of the country, by habitual violations of its jurisdiction, and, at length, by putting to death one of the persons whom they had forcibly taken from on board the Chesapeake. These aggravations necessarily lead to the policy either of never admitting an armed vessel into our harbors, or of maintaining in every harbor such an armed force as may constrain obedience to the laws, and protect the lives and property of our citizens against their armed guests. But the expense of such a standing force, and its inconsistence with our principles, dispense with those courtesies which would necessarily call for it, and leave us equally free to exclude the navy as we are the army of a foreign Power from entering our limits.

To former violations of maritime rights another is now added of very extensive effect. The Government of that nation has issued an order interdicting all trade by neutrals between ports not in amity with them. And being now at war with nearly every nation on the Atlantic and Mediterranean seas, our vessels are required to sacrifice their cargoes at the first port they touch, or to return home without the benefit of going to any other market. Under this new law of the ocean, our trade on the Mediterranean has been swept away by seizures and condemnations, and that in other seas is threatened with the same fate.

Our differences with Spain remain still unsettled; no measure having been taken on her part, since my last communication to Congress, to bring them to a close. But under a state of things which may favor reconsideration, they have been recently pressed, and an expectation is entertained that they may now soon be brought to an issue of some sort. With their subjects on our borders no new collisions have taken place nor seem immediately to be apprehended. To our former grounds of complaint has been added a very serious one, as you will see by the decree, a copy of which is now communicated. Whether this decree, which professes to be conformable to that of the French Government of November 21, 1806, heretofore communicated to Congress, will also be conformed to that in its construction and application in relation to the United States, had not been ascertained at the date of our last communications. These, however, gave reason to expect such a conformity.

With the other nations of Europe our harmony has been uninterrupted, and commerce and friendly intercourse have been maintained on their usual footing.

Our peace with the several States on the coast of Barbary appears as firm as at any former period, and as likely to continue as that of any other nation.

Among our Indian neighbors in the Northwestern quarter, some fermentation was observed soon after the late occurrences, threatening the continuance of our peace. Messages were said to be interchanged, and tokens to be passing, which usually denote a state of restlessness among them, and the character of the agitators pointed to the sources of excitement. Measures were immediately taken for providing against that danger; instructions were given to require explanations, and, with assurances of our continued friendship, to admonish the tribes to remain quiet at home, taking no part in quarrels not belonging to them. As far as we are yet informed, the tribes in our vicinity, who are most advanced in the pursuits of industry, are sincerely disposed to adhere to their friendship with us, and to their peace with all others. While those more remote do not present appearances sufficiently quiet to justify the intermission of military precaution on our part.

The great tribes on our Southwestern quarter, much advanced beyond the others in agriculture and household arts, appear tranquil and identifying their views with ours, in proportion to their advancement. With the whole of these people, in every quarter, I shall continue to inculcate peace and friendship with all their neighbors, and perseverance in those occupations and pursuits which will best promote their own well-being.

The appropriations of the last session, for the defence of our seaport towns and harbors, were made under expectation that a continuance of our peace would permit us to proceed in that work according to our convenience. It has been thought better to apply the sums then given towards the defence of New York, Charleston, and New Orleans, chiefly, as most open and most likely first to need protection, and to leave places less immediately in danger to the provisions of the present session.

The gunboats, too, already provided, have, on a like principle, been chiefly assigned to New York, New Orleans, and the Chesapeake. Whether our movable force on the water, so material in aid of the defensive works on the land, should be augmented in this or any other form, is left to the wisdom of the Legislature. For the purpose of manning these vessels, in sudden attacks on our harbors, it is a matter of consideration whether the seamen of the United States may not justly be formed into a special militia, to be called on for tours of duty in defence of the harbors where they shall happen to be; the ordinary militia of the place furnishing that portion which may consist of landsmen.

The moment our peace was threatened, I deemed it indispensable to secure a greater provision of those articles of military stores with which our magazines were not sufficiently furnished. To have awaited a previous and special sanction by law would have lost occasions which might not be retrieved. I did not hesitate, therefore, to authorize engagements for such supplements to our existing stock as would render it adequate to the emergencies threatening us; and I trust that the Legislature, feeling the same anxiety for the safety of our country, so materially advanced by this precaution, will approve, when done, what they would have seen so important to be done, if then assembled. Expenses, also unprovided for, arose out of the necessity of calling all our gunboats into actual service for the defence of our harbors; of all which accounts will be laid before you.

Whether a regular army is to be raised, and to what extent, must depend on the information so shortly expected. In the mean time, I have called on the States for quotas of militia, to be in readiness for present defence; and have, moreover, encouraged the acceptance of volunteers, and I am happy to inform you that these have offered themselves with great alacrity in every part of the Union. They are ordered to be organized, and ready at a moment's warning, to proceed on any service to which they may be called, and every preparation within the Executive powers has been made to insure us the benefit of early exertions.

I informed Congress at their last session of the enterprises against the public peace, which were believed to be in preparation by Aaron Burr and his associates, of the measures taken to defeat them, and to bring the offenders to justice. Their enterprises were happily defeated by the patriotic exertions of the militia whenever called into action, by the fidelity of the Army and energy of the Commander-in-Chief, in promptly arranging the difficulties presenting themselves on the Sabine, repairing to meet those arising on the Mississippi, and dissipating, before their explosion, plots engendering there. I shall think it my duty to lay before you the proceedings, and the evidence publicly exhibited on the arraignment of the principal offenders before the circuit court of Virginia. You will be enabled to judge whether the defect was in the testimony, in the law, or in the administration of the law, and wherever it shall be found, the Legislature alone can apply or originate the remedy. The framers of our Constitution certainly supposed they had guarded, as well their Government against destruction by treason, as their citizens against oppression, under pretence of it, and if these ends are not attained, it is of importance to inquire by what means more effectual they may be secured.

The accounts of the receipts of revenue during the year ending on the thirtieth day of September last, being not yet made up, a correct statement will be hereafter transmitted from the Treasury. In the mean time, it is ascertained that the receipts have amounted to near sixteen millions of dollars, which, with the five millions and an half in the Treasury at the beginning of the year, have enabled us, after meeting the current demands and interest incurred, to pay more than four millions of the principal of our funded debt. These payments, with those of the preceding five and a half years, have extinguished of the funded debt twenty-five millions and a half of dollars, being the whole which could be paid or purchased within the limits of the law and of our contracts, and have left us in the Treasury eight millions and a half of dollars. A portion of this sum may be considered as a commencement of accumulation of the surplusses of revenue, which, after paying the instalments of debt as they shall become payable, will remain without any specific object. It may partly indeed be applied towards completing the defence of the exposed points of our country, on such a scale as shall be adapted to our principles and circumstances. This object is doubtless among the first entitled to attention, in such a state of our finances, and it is one which, whether we have peace or war, will provide security where it is due. Whether what shall remain of this, with the future surplusses, may be usefully applied to purposes already authorized, or more usefully to others requiring new authorities, or how otherwise they shall be disposed of, are questions calling for the notice of Congress, unless indeed they shall be superseded by a change in our public relations, now awaiting the determination of others. Whatever be that determination, it is a great consolation that it will become known at a moment when the Supreme Council of the nation is assembled at its post, and ready to give the aids of its wisdom and authority to whatever course the good of our country shall then call us to pursue.

Matters of minor importance will be the subjects of future communications, and nothing shall be wanting on my part which may give information or despatch to the proceedings of the Legislature in the exercise of their high duties, and at a moment so interesting to the public welfare.

TH. JEFFERSON.

OCTOBER 27, 1807.

The Message was read, and three hundred copies thereof, together with the documents therein referred to, ordered to be printed for the use of the Senate.

WEDNERDAY, October 28.

Mr. ADAMS submitted the following motions, for consideration:

"That so much of the President's Message as relates to the recent outrages committed by British armed vessels within the jurisdiction, and in the waters of the United States, and to the Legislative provisions which may be expedient as resulting from them, be referred to a select committee, with leave to report by bill or otherwise."

"That so much of the said Message as relates to the formation of the seamen of the United States into a special militia, for the purpose of occasional defence of the harbors against sudden attacks, be referred to a select committee, with leave to report by bill or otherwise."

Mr. MITCHILL submitted the following motion for consideration:

Resolved, That the part of the President's Message which relates to the defence of our seaport towns and harbors, and the further provisions to be made for their security, be referred to a select committee, with leave to report by bill or otherwise.

THURSDAY, October 29.

JAMES HILLHOUSE, from the State of Connecticut, attended.

A message from the House of Representatives informed the Senate that the House concur in the resolution sent from the Senate for the appointment of Chaplains to Congress during the present session.

On motion, the Senate proceeded to the election of a Chaplain on their part, in pursuance of the resolution of the two Houses, and the whole number of votes collected was 21, of which the Rev. Mr. GANTT had 11, and was accordingly elected.

FRIDAY, October 30.

The Senate took into consideration the motion made on the 28th instant, "That so much of the 'Message of the President of the United States as 'relates to the recent outrages committed by Brit-'ish armed vessels within the jurisdiction and in 'the waters of the United States, and to the Le-'gislative provisions which may be expedient as 'resulting from them, be referred to a select com-'mittee, with leave to report by bill or otherwise," and agreed thereto; and,

Ordered, That Messrs. ADAMS, SMITH, of Maryland, MILLEDGE, MITCHILL, and ANDERSON, be the committee.

The Senate also took into consideration the other motion made on the 28th instant, "That so 'much of the Message of the President of the 'United States as relates to the formation of the 'seamen of the United States into a special mili-'tia, for the purpose of occasional defence of the 'harbors against sudden attacks, be referred to a 'select committee, with leave to report by bill or 'otherwise," and agreed thereto; and,

Ordered, That Messrs. SMITH of Maryland, BRADLEY, and SUMTER, be the committee.

A motion was made by Mr. ADAMS that the following rule be added to the rules for conducting business in the Senate.

"At the commencement of every session a committee of three members shall be appointed, whose duty it shall be to audit and control the contingent expenses of the Senate.

Ordered, That this motion lie for consideration.

Mr WHITE submitted the following motion for consideration:

Resolved, That a committee be appointed to inquire into the expediency of extinguishing the claims of the United States to certain balances reported to be due from several of the States to the United States, by the Commissioners appointed to settle the accounts of the individual States with the United States, and that the said committee have leave to report by bill or otherwise.

MONDAY, November 2.

JOHN GAILLARD, appointed a Senator by the Legislature of the State of South Carolina, for the term of six years, commencing on the fourth day of March last, and JOHN SMITH, appointed a Senator by the Legislature of the State of New York, for the term of six years, commencing on the fourth day of March last, respectively took their seats, and the oath prescribed by law was administered to them: their credentials having been read and filed during the last session.

On motion, by Mr. MILLEDGE, it was

Resolved, That the members of the Senate, from a sincere desire of showing every mark of respect due to the memory of the honorable ABRAHAM BALDWIN, deceased, late a member thereof, will go into mourning for him one month, by the usual mode of wearing a crape round the left arm.

On motion, by Mr. HILLHOUSE, it was

Resolved, That the members of the Senate from a sincere desire of showing every mark of respect due to the memery of the honorable URIAH TRACY, deceased, late a member thereof, will go into mourning for him one month, by the usual mode of wearing a crape round the left arm.

The PRESIDENT communicated certain resolutions of the Legislature of the State of New York, that an application be made to the President of the United States to fix on a plan for the permanent defence of the port of New York; and approving of the conduct of the Senators and Representatives of that State, in Congress, in advocating and enforcing the claims of the State in this respect; and the resolutions were read.

A message from the House of Representatives informed the Senate that the House have appointed the Reverend Mr. BROWN, a Chaplain to Congress on their part, during the present session.

TUESDAY, November 3.

ANDREW MOORE, from the State of Virginia, attended,

The PRESIDENT communicated a letter, signed William Eaton, enclosing the translation of a petition of Hamet Bashaw Caramalli, stating his services and sufferings in behalf of the United States, in which, relying on promises of remuneration, he hath exposed his life, and sacrificed

all his means, and praying relief; and the petition was read, and ordered to lie for consideration.

WEDNESDAY, November 4.

The Senate resumed the motion made on the 25th October, "That a committee be appointed 'to take into consideration the expediency of authorizing the State of Tennessee to reduce the 'price of certain lands which were ceded to the 'said State by the United States, by an act entitled 'An act authorizing the State of Tennessee 'to issue grants and perfect titles to certain 'lands therein described, and to settle the claims 'to vacant and unappropriated lands within the 'same," to such price as the Legislature of the 'said State may, in their judgment, deem expe-'dient; and that the committee have leave to 'report by bill or otherwise;" and the motion was agreed to; and

Ordered, That Messrs. ANDERSON, BRADLEY, and ADAMS, be the committee.

The Senate resumed the motion made on the 30th October, that the following rule be added to the rules for conducting business in the Senate:

"At the commencement of every session a committee of three members shall be appointed, whose duty it shall be to audit and control the contingent expenses of the Senate."

And the motion was agreed to; and ordered that Messrs. ADAMS, ANDERSON, and GAILLARD be the committee.

On motion, it was

Ordered, That Messrs. GREGG, THRUSTON, and JONES, be a committee for the examination of engrossed bills, agreeably to the twenty-second rule for conducting business in the Senate.

The following motion was submitted by Mr. BRADLEY, for consideration:

Resolved, That a committee be appointed to inquire whether any, and, if any, what further and more effectual provisions are necessary in addition to the act, entitled "An act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction;" with leave to report by bill or otherwise.

THURSDAY, November 5.

The Senate resumed the motion made on the 30th October, "That a committee be appointed to 'inquire into the expediency of extinguishing the 'claims of the United States to certain balances 'reported to be due from several of the States to 'the United States by the Commissioners appointed to settle the accounts of the individual States 'with the United States; and that the said committee have leave to report by bill or otherwise;" and the motion was adopted; and

Ordered, That Messrs. WHITE, FRANKLIN, and SMITH, of New York, be the committee.

Mr. TIFFIN submitted the following motion for consideration:

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both Houses concurring, That the following section be submitted to the Legislatures of the several States, which, when ratified and confirmed by the Legislatures of three-fourths of the said States, shall be valid and binding, as a part of the Constitution of the United States, in lieu of the first section of third article thereof:

"The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices for —— years, shall be removed by the President on the address of two-thirds of both Houses of Congress requesting the same, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office."

On motion, it was

Resolved, That Mr. ROBINSON be of the committee for enrolled bills, jointly with such committee as may be appointed for that purpose on the part of the House of Representatives.

Mr. MITCHILL submitted the following motion for consideration:

Resolved, That a committee be appointed to inquire whether any, and what, alterations are necessary to be made in the laws respecting insurrections and violations of the public peace and authority, as well as the laws respecting the conspiracy or enterprise of private individuals against foreign nations in amity with the United States; with leave to report by bill or otherwise.

FRIDAY, November 6.

The Senate assembled; and adjourned to 11 o'clock to-morrow morning.

SATURDAY, November 7.

The PRESIDENT laid before the Senate the report of the Secretary of the Treasury, in obedience to the act, entitled "An act to establish the Treasury Department;" and the report was read, and ordered to lie for consideration; and that the usual number be printed for the use of the Senate.

The PRESIDENT communicated a letter from the Governor of the Indiana Territory, together with certain resolutions of the Legislative Council and House of Representatives of the said Territory, on the expediency of suspending the sixth article of compact contained in the ordinance for the government of the Northwest Territory, passed the 13th day of July, 1787, which respects the admission of slaves; for reasons mentioned in the said resolutions; also, a remonstrance of sundry citizens of Clark county, in Springville, in the said Territory, against the said resolutions; and stating the expediency of suspending any proceedings on the subject, until the period arrives when the said Territory may be admitted into the Union; and the communications were read.

Ordered, That they be referred to Messrs. FRANKLIN, KITCHEL, and TIFFIN, to consider and report thereon

MONDAY, November 9.

Mr. POPE, appointed a Senator by the State of Kentucky, produced his credentials, which were read and ordered to lie on file.

The motion made on the 4th instant, "That a 'committee be appointed to inquire whether any, 'and, if any, what, further and more effectual 'provisions are necessary, in addition to the act, 'entitled 'An act for the more effectual preserva- 'tion of peace in the ports and harbors of the 'United States, and in the waters under their ju- 'risdiction,' with leave to report by bill, or other- 'wise," was resumed and adopted; and

Ordered, That it be referred to Messrs. ADAMS, SMITH of Maryland, MILLEDGE, MITCHILL, and ANDERSON, the committee appointed the 30th October, to consider that part of the Message of the President of the United States which respects "the recent outrages committed by British armed vessels," and that Messrs BRADLEY, and SUMTER be added to the said committee.

TUESDAY, November 10.

A letter was communicated from Dr. GANTT, declining his appointment to be Chaplain.

On motion, that the Senate proceed to the election of a Chaplain in place of Mr. GANTT, declined, it was agreed to postpone the appointment until to-morrow.

The Senate resumed the motion made on the 5th November, "That a committee be appointed 'to inquire whether any, and what, alterations 'are necessary to be made in the laws respecting 'insurrections and violations of the public peace 'and authority, as well as the laws respecting the 'conspiracy or enterprise of private individuals 'against foreign nations in amity with the United 'States; with leave to report by bill or otherwise."

Ordered, That the further consideration thereof be postponed.

WEDNESDAY, November 11.

The Senate proceeded to the election of a Chaplain, in place of Mr. GANTT, declined, and the Reverend Mr. MCCORMICK was chosen.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act making further appropriations for the support of the Navy of the United States during the year 1807;" in which they request the concurrence of the Senate.

The bill was read, and ordered to the second reading.

THURSDAY, November 12.

The bill, entitled "An act making further appropriations for the support of the Navy of the United States during the year 1807," was read the second time, and referred to Messrs. ANDERSON, GILMAN, and ADAMS, to consider and report thereon.

FRIDAY, November 13.

SLAVERY IN INDIANA TERRITORY.

Mr. FRANKLIN, from the committee to whom were referred, on the 7th instant, the resolutions of the Legislative Council and House of Representatives of the Indiana Territory, on the propriety of suspending the sixth article of compact contained in the Ordinance for the government of the Northwestern Territory, passed the 13th day of July, 1787, together with a remonstrance of certain citizens of Clark county against the said resolutions, made report; which was read, and ordered to lie for consideration.

The report is as follows:

The Legislative Council and House of Representatives, in their resolutions, express their sense of the propriety of introducing slavery into their Territory, and solicit the Congress of the United States to suspend, for a given number of years, the sixth article of compact, in the Ordinance for the government of the Territory Northwest of the river Ohio, passed the 13th day of July, 1787. That article declares: "there shall be neither slavery nor involuntary servitude in the said Territory."

The citizens of Clark county, in their remonstrance, express their sense of the impropriety of the measure, and solicit the Congress of the United States not to act on the subject, so as to permit the introduction of slaves into the Territory; at least until their population shall entitle them to form a constitution and State government.

Your committee, after duly considering the matter, respectfully submit the following resolution:

Resolved, That it is not expedient at this time to suspend the sixth article of compact for the government of the Territory of the United States Northwest of the river Ohio.

In the Legislative Council and House of Representatives of the Indiana Territory.

Great solicitude has been evinced by the citizens of this Territory on the subject of the introduction of slaves. In the year 1802 a special convention of delegates from the respective counties petitioned Congress for a suspension of the sixth article of compact, contained in the Ordinance of 1787. In 1805 a majority of the members of the Legislative Council and House of Representatives remonstrated with Congress on the subject. In 1806 the Legislative Council and House of Representatives passed sundry resolutions, which were laid before Congress, declaratory of their sense of the propriety of admitting slaves; and, as the citizens of the Territory decidedly approve of the toleration of slavery, the Legislative Council and House of Representatives consider it incumbent on them briefly to state, on behalf of themselves and their constituents, the reasons which have influenced them in favor of the measure.

In the first place, candor induces us to premise that, in regard to the right of holding slaves, a variety of opinion exists; while some consider it decent and just to acquire them either by purchase or conquest, others consider their possession, by either tenure, as a crime of the deepest stain; that it is repugnant to every principle of natural justice, of political rights, and to every sentiment of humanity. Without entering into the merits of this controversy, it need only to be remarked, that the proposition to introduce slavery into the Territory is not embraced by them. It is not a question of liberty or slavery. Slavery now exists in the United States, and in this Territory. It was the crime of England, and their misfortune; and it now becomes a question, merely of policy, in what way the slaves are to be disposed of, that may be least dangerous to the

community, most useful to their proprietors, and by which their situation may be ameliorated.

As the law of Congress, prohibiting the further importation of slaves into the United States, takes effect the 1st of January next, it is evident that the proposed toleration will not increase the number in the United States.

It is believed (and has not experience verified the fact?) that such is the number of slaves in the Southern States, that the safety of individuals, as well as the political institutions of those States, are exposed to no small hazard. However desirable it may be to emancipate them, it can never be done until they are dispersed; it would be equally impolitic for the whites as for the slaves. The great current of emigration is constantly flowing from the Eastern and Southern States to the Western States and Territories. The increase of population in the western country for the last twenty years may afford some idea of its probable amount in the course of the present century: it must be immense; and were all the Territories opened to the introduction of slaves, a large proportion of them would naturally be drawn from the Southern States.

From a reference to the States of Kentucky and Tennessee at the time of the last United States' census, it is not believed that the number of slaves would ever become so great as to endanger either the internal peace or future prosperity of the Territory. It is also rendered improbable from the interior situation of the Territory, its climate, and productions.

Slavery is tolerated in the Territories of Orleans, Mississippi, and Louisiana: why should this Territory be excepted?

It is believed that slaves, possessed in small numbers by farmers, are better fed and better clothed than when they are crowded together in quarters by hundreds: their situation in Kentucky, Tennessee, and the back parts of Maryland and Virginia, verify this belief.

Resolved, by the Legislative Council and House of Representatives of the Indiana Territory, That it is expedient to suspend for a given number of years the sixth article of compact, contained in the Ordinance for the government of the Northwestern Territory, passed the 13th day of July, in the year 1787.

Resolved, That a copy of the foregoing be forwarded to the Vice President of the United States, with a request that he will lay the same before the Senate; and that a copy be forwarded to the Speaker of the House of Representatives, with a request that he will lay the same before the said House of Representatives; and that the Governor of this Territory be requested to forward the same, as aforesaid.

JESSE B. THOMAS,
Speaker of the House of Representatives.
SAMUEL GWATHMEY,
President pro tem. of the Legislative Council.

Passed the Legislative Council, September 19, 1807.
Attest: H. HURST, *Chief Clerk.*

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At a numerous meeting of the citizens of Clark county, in Springville, (agreeably to notice previously given,) on Saturday, the 10th day of October, 1807, for the purpose of taking into consideration the resolutions passed at the last session of the Legislature of the Indiana Territory, praying the Congress of the United States to suspend for a certain time the sixth article of compact contained in the Ordinance, Mr. John Beggs was chosen Chairman, and Davis Floyd, Secretary.

On motion,

Ordered, That a committee of five suitable persons be appointed to draught and report to this meeting, a memorial to Congress, in opposition to the resolutions of the Legislature of the Indiana Territory, on the subject of slavery in this Territory, by the suspension of the sixth article of compact contained in the Ordinance.

And the said committee was appointed, of Messrs. Abraham Little, John Owens, Charles Beggs, Robert Robertson, and James Beggs.

Mr. Little, from the aforesaid committee, reported a memorial, pursuant to the aforesaid order, in the words and figures following, viz:

To the Senate and House of Representatives of the United States, in Congress assembled:

The memorial of the citizens of Clark county, humbly showeth, that great anxiety has been, and still is, evinced by some of the citizens of this Territory, on the subject of the introduction of slavery into the same; but in no case has the voice of the citizens been unanimous. In the year 1802, at a special convention of delegates from the respective counties, a petition was forwarded to Congress, to repeal the sixth article of compact contained in the Ordinance; but the representation of all that part of the Territory east of Vincennes were present, and were decidedly opposed to that part of the petition.

In the year 1805 the subject was again taken up and discussed in the General Assembly, and a majority of the House of Representatives voted against said memorial on the aforesaid subject, and, consequently, the memorial was rejected, as the Journals of that House doth sufficiently evince; but a number of citizens thought proper to sign the same, and among the rest, the Speaker of the House of Representatives and the President of the Council, (though the President of the Council denies ever having signed the same;) and, by some legislative legerdemain, it found its way into the Congress of the United States, as the legislative act of the Territory. In the present year of 1807, the subject was again taken up by the Legislature of this Territory, and a majority of both Houses passed certain resolutions (in the proportion of two to one) for the purpose of suspending the sixth article of compact contained in the Ordinance, which, we presume, are before your honorable body. But let it be understood, that in the Legislative Council there were only three members present, who, for certain reasons, positively refused to sign the said resolutions; and they were reduced to the last subterfuge of prevailing on the President to leave his seat, and one of the other members to take it as President *pro tem.*, for the purpose of signing the said resolutions. Whether this be right or wrong, judge ye. And although it is contended by some, that, at this day, there is a great majority in favor of slavery, while the opposite opinion is held by others, the fact is certainly doubtful. But when we take into consideration the vast emigration into this Territory, and of citizens, too, decidedly opposed to the measure, we feel satisfied that, at all events, Congress will suspend any legislative act on this subject until we shall, by the Constitution, be admitted into the Union, and have a right to adopt such a constitution, in this respect, as may comport with the wishes of a majority of the citizens. As to the propriety of holding those in slavery whom it hath pleased the Divine Creator to create free, seems to us to be repugnant to the inestimable principles of a republican Government. Although some of the States have, and do hold slaves,

yet it seems to be the general opinion, even in those States, that they are an evil from which they cannot extricate themselves. As to the interest of the Territory, a variety of opinions exist; but suffer your memorialists to state, that it is a fact that a great number of citizens, in various parts of the United States, are preparing, and many have actually emigrated to this Territory, to get free from a Government which does tolerate slavery. The toleration of slavery is either right or wrong; and if Congress should think, with us, that it is wrong, that it is inconsistent with the principles upon which our future constitution is to be formed, your memorialists will rest satisfied that at least this subject will not be by them taken up until the constitutional number of the citizens of this Territory shall assume that right. It is considered useless for your memorialists to recapitulate the many reasons and objections which might be advanced, relying that this subject is fully and fairly understood by your honorable body, as it relates to the natural right, policy, and prosperity of a free and independent nation.

On motion,

Resolved, That the Chairman be requested to forward duplicate copies of these proceedings, (signed by the said Chairman, and countersigned by the Secretary,) one to the Vice President of the United States, or President of the Senate *pro tem.*, and one to the Speaker of the House of Representatives in the Congress of the United States.

By order of the meeting:

JOHN BEGGS, *Chairman.*

Attest:

DAVIS FLOYD, *Secretary.*

MONDAY, November 16.

Mr. ANDERSON, from the committee to whom was referred the bill, entitled "An act making further appropriations for the support of the Navy of the United States during the year 1807, reported certain documents, and the bill without amendment.

Ordered, That they lie for consideration.

Mr. GREGG presented the petition of William Lewis and Hugh Maxwell, stating that they have on hand a number of the Journals of Congress, under the Confederation, of Folwell's edition, which they will dispose of for the use of Congress, at the price heretofore stipulated by Government; and the petition was read, and referred to Messrs. GREGG, HOWLAND, and BRADLEY, to consider and report thereon.

NATIONAL DEFENCE.

Mr. MITCHILL rose to call the attention of the Senate to a motion he had made at the commencement of the session, relative to additional means of defence, and further measures of security to the seaports and harbors of the nation. This important subject had been introduced by him at an early day. It had been printed and laid upon the table for consideration, and it was his original intention to have suffered it to lie there until the official intelligence alluded to in the Message of the President should arrive from Great Britain.

Recent and alarming information, which had reached the seat of Government since the rising of the Senate on Friday last, though tinctured with rumor and resting on the credibility of private communication, had, however, altered his mind upon the business. The invasion of Zealand, the capitulation of Copenhagen, and the capture of the Danish fleet, were events of the utmost moment to neutral Powers, and taught them that the greatest moderation, prudence, and forbearance, were of no avail in guarding a mild, an unoffending, and peaceful people, against the violence of its rapacious and stronger neighbor. A visitation of a similar nature might, in the course of things, be expected from the same quarter, and the fairest of our commercial cities might be wrapt in flames or battered to ruins.

Year after year had rolled away in fruitless negotiation. He doubted whether, in the present posture of affairs, there would be any satisfactory adjustment of the points in dispute. It did not indeed follow that the failure to effect a treaty would necessarily bring on a war. But the dominion of the ocean was so proudly usurped by Britain, and the usurpation maintained by such a prodigious naval force, that it would be calculating extravagantly upon our good fortune to expect that our rights would not be invaded by them: and in an age of the world, when it was fashionable for ruling statesmen to sweep away, like cobwebs, abstract principles of right and written maxims of public law, it was surely a season when the weaker Powers ought to employ every precaution for their safety.

It was not his intention to recommend the construction of a Navy, carrying metal enough to dispute the empire of the high seas. His only object was to provide a force sufficient to protect our acknowledged territory, and to preserve peace within our seaports and harbors. During the intervals of peace, it was the duty of wise statesmen to prepare for war. Although the United States had been in the enjoyment of that blessing, with little interruption, for more than twenty years, there had been too little done to guard against those evils which, in the common course of events, it was scarcely possible to avoid. But although threatened with hostility from various quarters, the nation, on the whole, enjoyed a good share of tranquillity. There was yet time to prepare for the political tempest which would probably succeed the claim we had long experienced. The Treasury was in a condition to furnish the necessary sums, without imposing a cent of tax upon ourselves. And with time and money at our disposal, he conceived it to be a duty of the most imperative obligation that Congress should now retrieve, by more than ordinary exertions, the carelessness and neglect of preceding sessions.

During the last meeting of the National Legislature, indeed, a decent appropriation was made for the repair and erection of defensive works where they should appear to be most wanted. But how inadequate was this provision! Exigencies had arisen during the recess, which had obliged the President to contract debts on the national account to almost three-fourths of a million of dollars. And the bill on your table, Mr. President, has been brought in to make good this antici-

pated fund. Had Congress made more ample arrangements for the general safety, had they taken effectual measures of defence at an earlier day, or had they made the legal provision for purchasing the stores and implements which the general welfare requires, the Executive would not have been compelled to take the step which he has done, of pledging the national faith for a large amount of unappropriated money. But the Secretary of the Navy has acted wisely as well as boldly on this emergency; and the only sentiment to be uttered on the occasion is, that in consideration of the reluctance manifested by Congress to adopt an effectual system, and of the pressure of the existing circumstances, it was greatly to be lamented he had not anticipated three times as much.

Yet, even after all this expenditure, the Atlantic coast was certainly not protected as became a nation professing the feelings of bravery and honor, and boasting annually of its great and accumulating wealth. The vexations, captures, seizures, and murders, committed by the subjects of foreign sovereigns within the United States, were encouraged by their total impunity. And a sheet of paper containing a proclamation was read by them with little other concern than they perused anything else in print. Mr. M. said he was entirely persuaded that something more might be done, and ought to be done, to enforce respect to our laws within our undisputed limits, and at any rate he was convinced of the propriety of making a strong experiment for the purpose.

Mr. M. then took a survey of the coast from North to South, and asking whether it was not expedient to do something more for the security of the capital, and other numerous ports of Massachusetts? Did the capacious but defenceless harbor of Newport deserve to be left in its present condition? As to New York, which might be called the heart of the Union, it would be unkind and unnatural if he did not experience the keenest sensibility for its safety. Considerable indeed had been done towards its defence out of the appropriation for the year and out of the Executive anticipation. Of this, he thought it becoming in him to make a public acknowledgment. But much more remained still to be accomplished; and this would require the aid of additional appropriations. The harbor of New York and the entrance of the Chesapeake were the favorite places of rendezvous to piratical and hostile fleets. They were peculiarly exposed to their aggressions and insults; and were worthy of more powerful protection than had hitherto been extended to them. In coupling Norfolk with the city near the Hudson, he meant to express, from the openness of their ports, and their contiguity to the ocean, the equal claim they had, especially after the recent transactions in their respective neighborhoods, not to the favoritism or partiality, but to the equal justice and to the protecting arm of the nation. Though North Carolina might be considered as safe behind her shoals and beaches, it was far otherwise with her sister State on the south. For Charleston presented itself to his eye as requiring further succor from Government. The same remark applied to Georgia. For the works at Savannah had not recovered from the ruinous state to which they were reduced by the storm of 1804; and St. Mary's, now that the African slave trade was prohibited, would deserve further reparation, as well for the purpose of excluding the ships of enemies as of those who make merchandise of men.

Tracing the shore along to the mouths of the Mississippi, he beheld a weak and vulnerable point at Orleans; and whether that region was considered as the seat of domestic feuds, or the mark of foreign aggressions, it undoubtedly required a more stable and energetic support.

Although his proposition had a peculiar reference to the Atlantic boundary where our territory lay contiguous to the pretended domain of the British as lords of the seas, he did not wish to be understood as confining his ideas of protection to that quarter of the Union. He felt that as a statesman and Senator all and every part of the nation was entitled to the protecting care of the Government; and the States of the West and the North were as proper objects of its care and defence as those of the East and the South. If any gentleman would propose a plan for increasing the security of the inland frontier, where danger was to be apprehended from the savages and their European connexion, he would give it his hearty aid and co-operation. Whether the post near Natchez or at Natchitoches, the Chickasaw Bluffs or Massac, St. Louis or Miami, Detroit or Michilimackinac, stood in need of repairs or reinforcements, he was ready to vote the necessary appropriations. The warlike and murderous Sioux were actually at war with us on the Missouri; and a state of commotion scarcely less than a war had long existed in Michigan. Whatever was necessary for teaching Indians to dread our displeasure, and for bending the stubborn will of insurgents to the yoke of the laws, should receive from him all the countenance he could give. To Vermont, and the whole country bordering on Canada, he would vote ordnance and arms.

To some persons the posture of our affairs might appear less serious than they did to him. He was no alarmist; but the prostration of our commerce, the murder of our citizens, the violation of our sovereignty, and the postponement of reparation, were, each of them, solemn matters. They demanded something more than that passive and forbearing temper, of which our nation had given proofs almost without a parallel. There was a period of extreme endurance; and that period was now come. The people who enjoyed liberty held it upon this express condition, that they should maintain it against all who should attempt to wrest it from them or encroach upon it.

To spend our breath in inquiries whether a King in Europe is mad or in his senses, is as idle as the prating of the Athenians whether Philip of Macedon was sick or was dead. While they were talking about it, their independence was destroyed. Let us be active, and neither be surprised in our

sleep, nor in a reverie that is no better than slumber. But on a theme so copious, sir, it would be easy to expatiate at great length. The only difficulty I feel is in condensing my remarks. For moderate as my eloquence is, it would not be difficult for any one, possessing powers of speech smaller even than mine, to discourse to you for hours.

Mr. ROBINSON advocated the motion in warm and decided terms; when the question was put and carried, *nem. con.*—that the part of the President's Message which relates to the defence of our seaport towns and harbors, and the further provisions to be made for their security, be referred to a select committee, with leave to report by bill or otherwise; and a committee was accordingly appointed, consisting of Messrs. MITCHILL, ADAMS, SUMTER, MILLEDGE, and ROBINSON.

On motion, the Senate adjourned.

TUESDAY, November 17.

The PRESIDENT communicated a letter from JAMES FENNER, stating the resignation of his seat in the Senate.

The Senate took into consideration the report of the committee to whom was referred, on the 7th instant, the resolutions of the Legislative Council and House of Representatives of the Indiana Territory, on the propriety of suspending the 6th article of compact contained in the ordinance for the government of the Northwestern Territory, and agreed thereto; and,

Resolved, That it is not expedient, at this time, to suspend the 6th article of compact for the government of the Territory of the United States Northwest of the river Ohio.

On motion, it was

Ordered, That the Secretary transmit the following papers, to be filed in the office of the Secretary of State:

An authenticated copy of the cession of North Carolina of certain Western Territory to the United States:

An act of cession by the State of Delaware to the United States of a light-house and piers, and

A deed of cession of the same:

An act of cession of the State of Georgia to the United States of the light-house on Tybee Island:

A deed of cession by the State of Georgia to the United States of a light-house on Tybee Island: also,

A deed of cession by the State of Connecticut to the United States of certain territory called the "Western Reserve of Connecticut."

The Senate resumed, as in Committee of the Whole, the second reading of the bill, entitled "An act making further appropriations for the support of the Navy of the United States during the year 1807;" and the bill was reported to the House without amendment.

On the question, Shall this bill be read the third time? it passed in the affirmative.

Mr. TIFFIN submitted the following motion for consideration:

"*Resolved*. That a committee be appointed to inquire whether any and what alterations are necessary to be made in the 'Act for establishing circuit courts, and abridging the jurisdiction of the district courts, in the districts of Kentucky, Tennessee, and Ohio;' with leave to report by bill or otherwise."

WEDNESDAY, November 18.

Mr MACLAY presented the memorial of Archibald M'Call, of the city of Philadelphia, stating he united with several of his fellow citizens in representing to Congress, at the last session, the general hardships to which they had been exposed by a rigorous enforcement of the ten days' limitation allowed for signing bonds, in order to secure the benefit of drawback, and that he is debarred the drawback on certain teas imported into the port of Philadelphia; and praying relief, for reasons stated at large in his memorial; which was read, and ordered to lie on the table.

The motion made yesterday by Mr. TIFFIN was considered and adopted; and

Ordered, That Messrs TIFFIN, ANDERSON, and POPE, be the committee.

The bill, entitled "An act making further appropriations for the support of the Navy of the United States during the years 1807," was read the third time, and passed.

THURSDAY, November 19.

The credentials of ELISHA MATHEWSON, appointed a Senator by the Legislature of the State of Rhode Island, in the place of JAMES FENNER, elected Governor, were read.

FRIDAY, November 20.

Mr. MATHEWSON, from the State of Rhode Island, took his seat in the Senate, and the oath prescribed by law was administered to him.

Mr. MITCHILL, from the committee to whom was referred that part of the Message of the President of the United States which relates to the defence of the seaport towns and harbors of the United States, reported, in part, a letter from the Secretary of the Navy; also, a bill to appropriate money for the construction of an additional number of gunboats; and the bill was read and ordered to a second reading.

The following is the letter and bill:

NAVY DEPARTMENT, *Nov.* 8, 1807.

SIR: In answer to your letter of the 16th instant, in which you ask for such information in relation "to the defence of our seaport towns and harbors, and the further provision to be made for their security," as the Navy Department may possess: I have the honor to state that in aid of the fixed fortifications, which will be submitted by the Secretary of War, it is presumed that there will be required at the ports and harbors, mentioned below, the number of gunboats annexed to them respectively, viz:

At New Orleans, 16; Savannah, 8; St. Mary's, 4; Charleston, S. C., 10; Georgetown, do. 1; Wilmington, N. C., 3; Ocracock, 4; Albemarle Sound, 1; Norfolk, 60; Alexandria, 2; Baltimore, 3; Philadelphia, 4; Del-

aware bay and river, 10; Egg harbor, N. J., 1; Amboy, 2; New York, 50; Long Island, 4; New London, 6; Connecticut Shore, 6; Newport, R. I., 12; Tiverton, 1; Boston, 12; Salem and Newburyport, 6; Portland, 6; New Bedford, 4; Marblehead and Cape Ann, 2; York, Kennebunk, and Saco, 2; Kennebeck, Sheepscut, Damariscotta, Broad Bay, St. Georges', 5; Penobscot, 3; Frenchman's Bay, 2; Passamaquoddy Bay, 3; Portsmouth, N. H., 4. Making in all, - - - 257
Of which we have at this time provided, - - - 69

Would leave to be provided, gunboats, - - - 188

The building of these gunboats is estimated on an average, each, at $5,000, 188 gunboats, at $5,000, make - - - - - - - - $940,000
Deduct the amount of timber contracted for, as stated in the exhibit of extraordinary expenses incurred by the Navy Department since the 22d June last, - - - - 87,500

Would leave to be appropriated for building of 188 gunboats, - - - - - $852,500

Respectfully submitted.

ROBERT SMITH.

Hon. S. L. MITCHILL, Chairman, &c.

Be it enacted, &c., That the President of the United States be, and he hereby is, authorized and empowered to cause to be built a number not exceeding —— gunboats, and to equip, arm, man, fit out, and employ the same, for the better protection of the ports and harbors of the United States, and for such other purposes as in his opinion the public service may require.

SEC. 2. *And be it further enacted*, That a sum not exceeding —— dollars be, and hereby is appropriated, for this purpose, out of any moneys in the Treasury not otherwise appropriated.

MONDAY, November 23.

The bill to appropriate money for the construction of an additional number of gunboats was read the second time, as in Committee of the Whole, and the further consideration thereof postponed until Wednesday next.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

Agreeably to the assurance given in my message at the opening of the present session of Congress, I now lay before you a copy of the proceedings and of the evidence exhibited on the arraignment of Aaron Burr and others, before the circuit court of the United States held in Virginia in the course of the present year, in as authentic form as their several parts have admitted.

TH. JEFFERSON.

NOVEMBER 23, 1807.

The Message and documents therein referred to were read and ordered to lie for consideration.

[See Appendix for the documents.]

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act allowing an additional compensation to the Secretaries of the Mississippi, Indiana, Louisiana, and Michigan Territories," in which they request the concurrence of the Senate.

The bill was read, and ordered to the second reading.

TUESDAY, November 24.

The bill, entitled "An act allowing an additional compensation to the Secretaries of the Mississippi, Indiana, Louisiana, and Michigan Territories," was read the second time, and referred to Messrs. SMITH of Maryland, POPE, and SMITH, of Tennessee, to consider and report thereon.

BRITISH AGGRESSIONS.

Mr. ADAMS, from the committee to whom was referred "so much of the Message of the President of the United States as relates to the recent outrages committed by British armed vessels within the jurisdiction and within the waters of the United States, and to the Legislative provisions which may be expedient as resulting from them; with instructions to inquire whether any and what further and more effectual provisions are necessary in addition to the act, entitled 'An act for the more effectual preservation of peace in the ports and harbors of the United States, and the waters under their jurisdiction,'" reported a bill for the preservation of peace and maintenance of the authority of the United States in the ports, harbors, and waters, under their jurisdiction; and the bill was read, and ordered to the second reading.

[The three first sections provide for the arrest of offenders against the laws of the United States, who shall be on board of foreign armed vessels, authorizing the use of the military for that purpose.]

SEC. 4. And in order to prevent insults to the authority of the laws whereby the peace of the United States with foreign nations may be in danger, *Be it further enacted*, That it shall be lawful for the President of the United States, either to permit or interdict, at his discretion, the entrance of the harbors and waters under the jurisdiction of the United States, to all armed vessels belonging to any foreign nation, and by force to repel and remove them from the same, except when they shall be forced in by distress, by the dangers of the sea, by being pursued by an enemy, or when charged with despatches or business from the Government to which they belong; in which cases, as well as in all others when they shall be permitted to enter, the commanding officer shall immediately report his vessel to the collector of the district, stating the object or causes of his entering the harbor or waters, shall take such position therein as shall be assigned him by such collector, and shall conform himself, his vessel, and crew, to such regulations, respecting health, repairs, supplies, stay, intercourse, and departure, as shall be signified to him by the said collector, under the authority and directions of the President of the United States, and not conforming thereto, shall be required to depart from the United States.

SEC. 5. And whereas the commanders of certain British armed vessels have committed repeated acts of insubordination to the laws, violence to the persons, and trespasses on the property of the citizens within the ports and harbors of the United States, and by continued acts of outrage and aggression have forfeited all

claim to hospitality; and when required by the President of the United States, in pursuance of the authority given him by law, immediately to depart from the harbors and waters of the United States, have, in open defiance of the laws and government thereof, refused to depart, and, in violation of the laws of nations, have maintained themselves in hostile array, within the harbors and waters under the jurisdiction of the United States, and against the dignity of the same: Therefore, *Be it further enacted*, That no British armed vessel shall be admitted to enter the harbors and waters under the jurisdiction of the United States, but every British armed vessel is hereby interdicted except when they shall be forced in by distress, by the dangers of the sea, or when charged with despatches or business from their Government, or coming as a public packet for the conveyance of letters, in which case the commanding officer shall conform to the provisions contained in the fourth section of this act; and not conforming thereto shall be required to depart from the United States: *Provided*, That whensoever reparation shall be made to the United States, by the British Government, to the satisfaction of the President of the United States, for the outrages upon the national sovereignty and independence of the United States, committed on the twenty-second day of June last past, by the attack of a British squadron upon the United States frigate Chesapeake, and continued by numerous other acts of insult, aggression, and hostility, to the present time, it shall be lawful for the President of the United States, by proclamation, to remove this interdiction of all British armed vessels; and thereupon they may be admitted to enter the ports, harbors, and waters, under the jurisdiction of the United States, on the same footing and conditions as the armed vessels of other foreign nations.

SEC. 6. *And be it further enacted*, That if any armed vessel whatsoever, interdicted by any of the provisions of this act, or by proclamation of the President of the United States, issued under the authority thereof, shall, contrary to the true intent thereof, enter any of the harbors or waters under the jurisdiction of the United States, or if the commander of any armed vessel, admitted into any of the said harbors or waters, shall refuse or fail to comply with the regulation signified to him by the collector of the district as aforesaid, it shall be the duty of the collector, immediately to require, in writing, the commander of any such armed vessel to depart with his vessel, from the waters and jurisdiction of the United States, conformably to the provisions of this act. And if, after such requisition to depart, the commander of such armed vessel shall, in defiance thereof, fail, or refuse so to do, and with his vessel wilfully remain within, or return to any of the harbors or waters within the jurisdiction of the United States, every such vessel shall be deemed to have made an hostile invasion of the territory of the United States, and while remaining in the harbors or waters under the jurisdiction of the United States, shall be proceeded against as a vessel of an enemy, and may be seized, taken, and brought into any port of the United States, with her apparel, guns, and appurtenances, and, with the goods and effects on board the same, shall, conformably to the laws of nations, be liable to forfeiture and condemnation, and may be libelled and proceeded against in the District Court of the United States, for the district into which the same may be brought; and the forfeiture of every such armed vessel, goods, and effects, so seized, taken, and condemned, shall accrue wholly to the captors, and the proceeds thereof shall be distributed in the same manner as prize money. And the said captors shall also be entitled to receive the same bounty as is provided in the seventh section of the "Act for the better government of the Navy of the United States," passed the twenty-third day of April, one thousand eight hundred, and the President of the United States is hereby authorized and required to instruct the commanders of the armed vessels of the United States to subdue, seize, and take by force or otherwise every such interdicted armed vessel which shall be found violating the territory of the United States as aforesaid.

SEC. 7. *And be it further enacted*, That all pacific intercourse with any interdicted foreign armed vessel, the officers or crew thereof, is hereby forbidden, and if any person shall afford any aid to such armed vessel, either in repairing her, or in furnishing her, her officers, or crew, with supplies of any kind, or in any manner whatsoever, or if any pilot shall assist in navigating the said armed vessel, contrary to this prohibition, unless for the purpose of carrying her beyond the limits and jurisdiction of the United States, the person or persons so offending shall be liable to be bound to their good behaviour, and shall also forfeit and pay a sum not exceeding —— thousand dollars, to be recovered upon indictment or information, in any court of competent jurisdiction, in which last case, the said forfeiture shall accrue in equal portions to the United States and the informer.

SEC. 8. *And be it further enacted*, That it shall be lawful for the President of the United States, or such other persons as he shall have empowered for that purpose, to employ such part of the land forces of the United States, or the militia thereof, as he shall deem necessary, to compel the departure of any interdicted foreign armed vessel; and the said land forces and militia are hereby authorized, in execution of orders from the President of the United States, to seize, subdue, and bring in for forfeiture and condemnation, or to burn, sink, or destroy such interdicted foreign armed vessel, as the emergency of the case may require; and the President of the United States is hereby further authorized to refuse permission to any vessel belonging to the same nation, or to its citizens or subjects, to make entry or unlade, so long as the said interdicted armed vessel shall remain in the harbors or waters of the United States, in defiance of the public authority.

SEC. 9. *And be it further enacted*, That whenever any collector, conformably to the provisions of this act, shall have required, in writing, the commander of any foreign armed vessel to depart, and the said commander shall fail or refuse so to do, and remain in hostile array, in defiance of the laws and Government of the United States, it shall be the duty of such collector, within —— days, to publish, in one or more newspapers, his requisition to the said commander, and the neglect or refusal of the said commander to comply therewith; whereupon, it shall be lawful for any person or persons, in any manner whatsoever, whilst such armed vessel shall so remain within the jurisdiction of the United States, to burn, sink, or destroy every such armed vessel, and a bounty of —— dollars shall be paid by the United States, to such person or persons, for every gun carried by such armed vessel so burnt, sunk, or destroyed, when the same shall be effected otherwise than by the armed vessels of the United States.

SEC. 10. *And be it further enacted*, That if, while any interdicted foreign armed vessel shall so remain within the waters and jurisdiction of the United States

in defiance of their laws and authority, any of her officers or crew shall land, and be found on shore in any place within the jurisdiction of the United States, they shall be arrested and imprisoned at the discretion of the President of the United States.

SEC. 11. *And be it further enacted*, That whensoever any officer of an armed vessel commissioned by any foreign Power, shall, on the high seas, commit any trespass, or tort, or any spoliations on board any vessel of the United States, or any unlawful interruption, or vexation of trading vessels, actually coming to or going from the United States, it shall be lawful for the President of the United States, on satisfactory proof of the facts, by proclamation, to interdict the entrance of the said officer, and of any armed vessel by him commanded, within the limits of the United States; and if at any time after such proclamation made, he shall be found within the limits of the United States, he shall be liable therefor to be arrested, indicted, and punished by fine and imprisonment, in any court in the United States, having competent jurisdiction, and it shall be a part of the sentence, that he shall, within such time after the payment of his fine, and the expiration of his term of imprisonment as the court shall direct, leave the United States never to return. And if he shall return within the limits of the United States, after the passing of such sentence, or be found therein, after the period limited by the court as aforesaid, he shall again be liable to be indicted, fined, and imprisoned, at the discretion of the court: *Provided always*, That if the said officer shall also have committed any other offence, made punishable by this act, he shall be liable to prosecution and punishment, the provisions of this section to the contrary notwithstanding.

SEC. 12. *And be it further enacted*, That, for the purpose of carrying this act into effect, the President of the United States be, and he is hereby authorized and empowered, to cause to be fitted out, officered, manned, and employed, as soon as may be, all the frigates and other armed vessels of the United States, to be stationed at such ports and places on the seacoast, as he may direct, and to cause to be engaged, in addition to those now in the service, anything in any former act of Congress to the contrary notwithstanding, so many captains, officers, able seamen, ordinary seamen, and boys, as shall be necessary for the same, who shall not be engaged to serve for a period exceeding —— years; but the President may discharge the same sooner, if in his judgment their services may be dispensed with: And to satisfy the necessary expenditures to be incurred therein, a sum not exceeding —— dollars shall be, and is hereby, appropriated, and shall be paid out of any moneys in the Treasury not otherwise appropriated.

SEC. 13. *And be it further enacted*, That the President of the United States shall be, and he hereby is, authorized and required to give, as soon as may be, after the passage of this act, to the collectors of the respective districts, and to such other persons as he may think proper, the necessary instructions for carrying this act into effect, particularly marking out the line of conduct to be observed by the marshal and the several collectors in performing the duties enjoined by this act.

SEC. 14. *And be it further enacted*, That if any person shall be sued for anything done in pursuance of, or in obedience to this act, he may plead the general issue, and give this act in evidence, anything in any law, custom, or usage, to the contrary notwithstanding.

SEC. 15. *And be it further enacted*, That this act shall continue in force —— years, and from thence until the end of the next session of Congress, and no longer.

WEDNESDAY, November 25.

The bill for the preservation of peace and maintenance of the authority of the United States in the ports, harbors, and waters, under their jurisdiction, was read the second time as in Committee of the Whole, and the further consideration thereof postponed until to-morrow.

The Senate resumed, as in Committee of the Whole, the second reading of the bill to appropriate money for the construction of an additional number of gunboats; and, after debate, it was agreed that the further consideration thereof be the order of the day for Monday next.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act authorizing the purchase of certain copies of the journals of Congress;" also, a bill, entitled "An act to incorporate the Trustees of the Baptist Church, in the City of Washington;" in which bills they request the concurrence of the Senate.

The bills last mentioned were read, and ordered that they severally pass to the second reading.

Mr. ADAMS submitted the following motion for consideration:

Resolved, That the President of the United States be requested to cause to be laid before the Senate a return of the number of American seamen impressed or detained by British armed vessels, whose names have been reported to the Department of State since the last statement made to Congress; mentioning the names of the persons impressed, the time and place of their impressment, the names of the ships, and, as far as may be known, of the officers by whom they were impressed, together with any material facts or circumstances in relation to the same; stating, also, the whole number of seamen impressed since the commencement of the present war, what number of the persons impressed, according to the last statement of the Secretary of State, has since been restored, and the numbers still detained by the British, since demand of their restoration made; with the reasons assigned for their detention.

On motion, by Mr. POPE, it was

Resolved, That a committee be appointed to inquire whether any, and, if any, what, additional force is necessary to the military establishment of the United States; and

Ordered, That Messrs. POPE, SMITH of Maryland, and BRADLEY, be the committee.

THURSDAY, November 26.

Mr. SMITH, of Maryland, from the committee to whom was referred the bill entitled "An act allowing an additional compensation to the Secretaries of the Mississippi, Indiana, Louisana, and Michigan Territories, reported the bill without amendment.

Mr. POPE presented the petition of William Wells, stating that he had resided on and occupied, for many years, a tract of land situate at

Fort Wayne, in the Indiana Territory, at the confluence of the rivers St. Joseph's and St. Mary's which form the Miami of the Lake, on which he has made improvements, at a considerable expense; that he has made application to the proper officers of the United States to purchase said tract, but has not been able to succeed; and therefore prays that Congress would in their wisdom pass a law granting him the right of pre-emption to a tract of twelve hundred and eighty acres, to include his improvements, at the confluence of the rivers aforesaid, for reasons stated in his petition; which was read, and referred to Messrs. POPE, TIFFIN, and GREGG, to consider and report thereon.

The bill entitled "An act authorizing the purchase of certain copies of the journals of Congress," was read the second time, and referred to Messrs. GREGG, HOWLAND, and BRADLEY, the committee who have under consideration the petition of William Levis and Hugh Maxwell on this subject, to consider and report thereon.

The bill, entitled "An act to incorporate the Trustees of the Baptist Church in the City of Washington," was read the second timd, and referred to Messrs. BRADLEY, FRANKLIN, and MACLAY, to consider and report thereon.

The Senate resumed, as in Committee of the Whole, the second reading of the bill for the preservation of peace and maintenance of the authority of the United States in the ports, harbors, and waters, under their jurisdiction; and, after progress, adjourned.

FRIDAY, November 27.

CHAUNCEY GOODRICH, appointed a Senator by the Legislature of the State of Connecticut, to fill the vacancy occasioned by the death of the late Hon. Uriah Tracy, attended, and his credentials were read; and the oath prescribed by law was administered to him.

JOHN SMITH, from the State of Ohio, attended.

Mr. MACLAY presented the petition of a number of merchants of the city of Philadelphia, praying the repeal of the "Act to prohibit the importation of certain goods, wares, and merchandise," passed the 18th day of April, 1806, for reasons mentioned in the petition; which was read.

CASE OF JOHN SMITH.

Mr. MACLAY offered the following resolution:

Resolved, That a committee be appointed to inquire and report to the Senate their opinion whether John Smith, a Senator from the State of Ohio, ought not to be expelled from the Senate, in consequence of the part which he took in the conspiracy of Aaron Burr, against the peace and prosperity of the United States, or what other steps, in their opinion, it may be necessary and proper, under the present circumstances, for the Senate to adopt.

Mr. POPE moved to amend this resolution; to make way for which amendment, Mr. MACLAY withdrew his resolution.

Mr. THRUSTON offered the following resolution as an amendment, omitting that part in italics, which Mr. JONES moved as an amendment to the amendment:

Resolved, That a committee be appointed to inquire whether it be compatible with the honor and privileges of this House, that John Smith, a Senator from the State of Ohio, against whom bills of indictment were found at the Circuit Court of Virginia, held at Richmond in August last, for treason and misdemeanor, should be permitted any longer to have a seat therein; and that the committee do inquire into *all the facts regarding the conduct of Mr. Smith, as an alleged associate of Aaron Burr*, and report the same to the Senate.

Mr. HILLHOUSE objected to the resolution on the ground of allowing the committee too wide a latitude.

Mr. ADAMS vindicated the resolution from this objection.

Mr. POPE moved an adjournment, to allow further time for reflecting on the most correct course to be pursued.

Mr. THRUSTON advocated the powers given by the resolution to the committee; and, in reply to some observations previously made, remarked that a very different species of testimony from that required by a court of law would constitute sufficient ground for the Senate to act on in a case where the effect might be the expulsion of a member.

The motion to adjourn was lost, only four members rising in favor of it.

Mr. HILLHOUSE replied to the observations of Mr. THRUSTON on the score of testimony. He viewed those observations as extremely dangerous. Should they be carried into effect, the character of a man, however innocent, might be blasted. He thought the case called for great circumspection. He wished the inquiry to be made, and had prepared a resolution, which he read, as follows, as expressive of his opinion of the most proper course:

Resolved, That the Message of the President of the United States of November 23, 1807, together with the documents which accompanied the same, be referred to a committee to inquire how far John Smith, a member of this Senate, has been connected with or concerned in the transactions therein referred to, and report whether any and what proceedings ought to be had by this Senate in relation to said John Smith, and to send for persons, papers, and records.

Mr. TIFFIN rose, merely to state that he had seen attested copies of record in the case of Mr. SMITH, and to communicate to the Senate the contents of a letter which he had just received from him. The letter is as follows:

WASHINGTON, *November* 27, 1807.

DEAR SIR: Just having heard that a motion is pending in the Senate to appoint a committee to inquire into certain charges exhibited against me at Richmond, by the late grand jury, I beg you, sir, to assure the Senate, in my name, that nothing will afford me more pleasure than to have a public investigation of the said charges, and an opportunity to vindicate my innocence; and I beg you, from your seat, to make this statement.

I am, dear sir, respectfully, yours, &c.,

JOHN SMITH.

Hon. Mr. TIFFIN.

Mr. S. SMITH said, that, however unpleasant it might be, it was the duty of the Senate to meet

the proposed inquiry. It did not follow that such an investigation would go to criminate Mr. SMITH. It might, on the contrary, issue in his exculpation. He understood that that gentleman had expressed his conviction that a full investigation would completely exculpate him from the charges which had been preferred against him. Be this as it might, Mr. S. thought there were circumstances, which had been disclosed at Richmond, which called upon the Senate to go into the inquiry.

He alluded to the testimony of Blannerhasset's gardener and Lieutenant Jackson. He had, however, heard that Mr. SMITH thought it in his power to do away the charges flowing from these statements. Why an opportunity to do this should be refused, he could not understand. He added that he perceived no objection to an examination of two of the members of the grand jury, who held seats in the other House, with regard to the grounds on which the bills of indictment had been found; from which examination, it would appear whether there was any necessity for sending for other testimony. These considerations would induce him to vote for the resolution, at the same time that he was *little* solicitous as to the particular resolution which should be adopted.

Mr. MITCHILL stated that Mr. SMITH had expressed to him his regret at not having been tried at Richmond on both the charges preferred against him, as he was confident that he could have established his innocence. What was the object of the resolution? To give him this opportunity—to allow him the only resource that remained—to allow him to be tried here by his peers. Therefore, so far as it related to the character of Mr. SMITH, or to the dignity of the Senate, the inquiry seemed a proper one, and he should consequently vote for the resolution.

Mr. THRUSTON said that he felt some delicacy in having hazarded an opinion on the subject of testimony, which seemed in some respects to militate against the provisions of the Constitution. What he had uttered on this point had been the result of momentary impressions, and might possibly, on further reflection, be considered, even by himself, as erroneous. He should be sorry, that, on a point of so much importance, anything which had thus hastily fallen from him should go abroad which might be erroneous. But as the remark had dropped from him, he would briefly state the grounds on which he had made it, which he still felt to be satisfactory. He was still of opinion that the Senate, in such a case, were not bound by the technical rules of law, as rigidly observed in courts. Various considerations compelled them to pay particular regard to their character and convenience. Hence the Constitution had conferred upon them an unlimited power to expel a member. In such a case they were constituted both accusers and judges, in direct violation of the common principles of law. A member might be expelled for acts which would not render him amenable to a court of justice. He was therefore of opinion, that in this case, the Senate might decide upon what appeared to them credible testimony, although it should not be of such a character as would be admitted in a court of law.

The question was then taken on the resolution offered by Mr. THRUSTON, and amended by Mr. JONES, and carried without a division; and Messrs. ADAMS, MACLAY, FRANKLIN, S. SMITH, POPE, THRUSTON, and ANDERSON, were appointed the committee.

In the course of the proceedings, Mr. WHITE read the following resolution, as such an one as he thought it most expedient to adopt:

Resolved, That a committee be appointed to inquire whether any and what proceedings should be had against John Smith, a Senator from the State of Ohio, in relation to any connexion he may be supposed to have had with the conspiracy or any illegal enterprise of Aaron Burr; and that the said committee have power to send for persons, papers, and records, on the subject committed to them, and to report the facts to the Senate.

MONDAY, November 30.

The Senate resumed the motion made on the 25th instant, on the subject of impressed seamen; and

Resolved, That the President of the United States be requested to cause to be laid before the Senate a return of the number of American seamen impressed or detained by British armed vessels, whose names have been reported to the Department of State since the last statement made to Congress; mentioning the names of the persons impressed, the time and place of their impressment, the names of the ships, and, as far as may be known, of the officers by whom they were impressed, together with any material facts or circumstances in relation to the same; stating, also, the whole number of seamen impressed since the commencement of the present war; what number of the persons impressed, according to the last statement of the Secretary of State, has since been restored, and the numbers still detained by the British since demand of their restoration made, with the reasons assigned for their detention.

Ordered, That the Secretary lay this resolution before the President of the United States.

Mr. ADAMS stated that he was instructed, by the committee appointed on the 27th instant to inquire into the conduct of JOHN SMITH, a Senator from the State of Ohio, to submit to the Senate the following resolution; which was read and agreed to:

Resolved, That the President of the United States be requested to cause to be laid before the Senate such information as may be in his possession in relation to the conduct of John Smith, a Senator from the State of Ohio, as an alleged associate of Aaron Burr.

Ordered, That the Secretary lay this resolution before the President of the United States.

Mr. ADAMS, from the same committee, also stated that he was instructed to submit to the Senate the following resolution; which was read and agreed to:

Resolved, That the committee appointed on the 27th instant, to inquire and report the facts respecting the conduct of John Smith, a Senator from the State of Ohio, as an alleged associate of Aaron Burr, be authorized to extend their inquiries to any other facts which, in their opinion, would be incompatible with his duty

as a Senator of the United States; and that they be authorized to send for persons, papers, and records.

Agreeably to the order of the day, the Senate resumed, as in Committee of the Whole, the second reading of the bill to appropriate money for the construction of an additional number of gunboats; and

Ordered, That the further consideration of this bill be posponed.

The Senate resumed, as in Committee of the Whole, the second reading of the bill, entitled "An act allowing additional compensation to the Secretaries of the Mississippi, Indiana, Louisiana, and Michigan Territories; and the bill having been reported to the House without amendment. on the question, Shall this bill be read the third time? it was determined in the affirmative.

The Senate resumed, as in Committee of the Whole, the second reading of the bill for the preservation of peace, and maintenance of the authority of the United States, in the ports, harbors, and waters under their jurisdiction; and, after progress, adjourned.

TUESDAY, December 1.

The bill, entitled "An act allowing an additional compensation to the Secretaries of the Mississippi, Indiana, Louisiana, and Michigan Territories," was read the third time, and passed.

BRITISH AGGRESSIONS.

The Senate resumed, as in Committee of the Whole, the second reading of the bill for the preservation of peace, and maintenance of the authority of the United States, in the ports, harbors, and waters under their jurisdiction; and the PRESIDENT reported the bill amended.

On motion, it was agreed to strike out the 15th section.

On motion to strike out the 5th section, as follows:

"And whereas the commanders of certain British armed vessels have committed repeated acts of insubordination to the laws, violence to the persons, and trespasses on the property of the citizens within the ports and harbors of the United States, and by continued acts of outrage and aggression have forfeited all claim to hospitality; and when required by the President of the United States, in pursuance of the authority given him by law, immediately to depart from the harbors and waters of the United States, have, in open defiance of the laws and Government thereof, refused to depart, and, in violation of the laws of nations, have maintained themselves in hostile array within the harbors and waters under the jurisdiction of the United States, and against the dignity of the same: Therefore, *Be it further enacted*, That no British armed vessel shall be permitted to enter the harbors and waters under the jurisdiction of the United States; but every British armed vessel is hereby interdicted, except when they shall be forced in by distress, by the dangers of the sea, or when charged with despatches or business from their Government, or coming as a public packet for the conveyance of letters; in which cases, the commanding officer shall conform to the provisions contained in the fourth section of this act; and not conforming thereto, shall be required to depart from the United States: *Provided*, That it shall be lawful for the President of the United States, whenever he may deem it expedient, by proclamation, to remove this interdiction of all British armed vessels."

It passed in the negative—yeas 3, nays 26, as follows:

YEAS—Messrs. Goodrich, Hillhouse, and Pickering.

NAYS—Messrs. Adams, Anderson, Bradley, Condit, Franklin, Gaillard, Gilman, Gregg, Howland, Kitchel, Maclay, Mathewson, Milledge, Mitchill, Moore, Parker, Pope, Robinson, Smith of Maryland, Smith of New York, Smith of Tennessee, Sumter, Thruston, Tiffin, Turner, and White.

On the question, Shall this bill be engrossed and read a third time? it was determined in the affirmative.

WEDNESDAY, December 2.

The Senate resumed, as in Committee of the Whole, the second reading of the bill to appropriate money for the construction of an additional number of gunboats.

On the question, Shall this bill be engrossed and read a third time? it was determined in the affirmative.

The bill for the preservation of peace and maintenance of the authority of the United States in the ports, harbors, and waters, under their jurisdiction, was read the third time; and the blanks having been filled, on the question. Shall this bill pass? it was determined in the affirmative—yeas 26, nays 3, as follows:

YEAS—Messrs. Adams, Anderson, Bradley, Condit, Franklin, Gaillard, Gilman, Gregg, Howland, Kitchel, Maclay, Mathewson, Milledge, Mitchill, Moore, Parker, Pope, Robinson, Smith of Maryland, Smith of New York, Smith of Tennessee, Sumter, Thruston, Tiffin, Turner, and White.

NAYS—Messrs. Goodrich, Hillhouse, and Pickering.

So it was *Resolved*, That this bill pass, and that the title thereof be "An act for the preservation of peace and maintenance of the authority of the United States in the ports, harbors, and waters, under their jurisdiction."

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate of the United States:

In compliance with the request made in the resolution of the Senate, of November 30, I must inform them, that when the prosecutions against Aaron Burr and his associates were instituted, I delivered to the Attorney General all the evidence on the subject, formal and informal, which I had received, to be used by those employed in the prosecutions. On the receipt of the resolution of the Senate, I referred it to the Attorney General, with a request that he would enable me to comply with it, by putting into my hands such of the papers as might give information relative to the conduct of John Smith, a Senator from the State of Ohio, as an alleged associate of Aaron Burr, and having this moment received from him the affidavit of Elias Glover, with an assurance that it is the only paper in his possession which is within the term of the request of the Senate, I now transmit it for their use.

TH. JEFFERSON.

DECEMBER 2, 1807.

The Message was read.

Ordered, That the Message, and paper therein mentioned, be referred to the committee appointed, on the 27th of November last, to inquire into the conduct of Mr. Smith, as an alleged associate of Aaron Burr.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act authorizing the erection of a bridge over the river Potomac, within the District of Columbia;" a bill, entitled "An act extending the right of suffrage in the Mississippi Territory, and for other purposes;" also, a bill, entitled "An act to change the name of the district of Biddeford and Pepperelborough, in Massachusetts, to that of Saco."

The bills were read, and ordered to the second reading.

THURSDAY, December 3.

Mr. MITCHILL, from the committee to whom was referred that part of the Message of the President of the United States which relates to the defence of the seaport towns and harbors, further reported, in part, sundry documents on the subject. He also reported a bill making an appropriation for the more effectual defence of the ports and harbors of the United States;" which was read, and ordered to the second reading.

The bill, entitled "An act extending the right of suffrage in the Mississippi Territory, and for other purposes," was read the second time, and referred to Messrs. MITCHILL, MILLEDGE, and ANDERSON, to consider and report thereon.

The bill, entitled "An act to change the name of the district of Biddeford and Pepperelborough, in Massachusetts, to that of Saco," was read the second time, and referred to Messrs. ADAMS, HILLHOUSE, and PICKERING, to consider and report thereon.

The bill, entitled "An act authorizing the erection of a bridge over the river Potomac, within the District of Columbia," was read the second time, and referred to Messrs. MOORE, POPE, and BRADLEY, to consider and report thereon.

The bill to appropriate money for the construction of an additional number of gunboats, was read the third time, and a motion for a postponement thereof until Monday next having been disagreed to, on the question, Shall this bill pass? it was determined in the affirmative.

So it was *Resolved*, That this bill pass, and that the title thereof be "An act to appropriate money for the construction of an additional number of gunboats."

FRIDAY, December 4.

Mr. ADAMS stated that he was instructed by the committee appointed to inquire into the conduct of JOHN SMITH, a Senator from the State of Ohio, to submit the following resolution; which was read and agreed to:

Resolved, That the committee appointed to inquire into the conduct of John Smith, a Senator from the State of Ohio, be authorized to admit the attendance of Mr. Smith.

Mr. POPE, from the committee to whom was referred the motion to inquire whether any, and, if any, what, additional force is necessary to the Military Establishment of the United States, asked and obtained leave to report by bill. He accordingly reported a bill supplementary to the act, entitled "An act fixing the Military Peace Establishment of the United States;" which was read, and ordered to the second reading.

The bill making an appropriation for the more effectual defence of the ports and harbors of the United States, was read the second time, and the further consideration thereof postponed until Monday next.

The following motion was submitted for consideration by Mr. GILMAN:

Ordered, That the Secretary of the Senate (under the direction of the Vice President) do engage an additional engrossing clerk, who shall also attend to such other duties as the President of the Senate may from time to time direct.

MONDAY, December 7.

Mr. ADAMS stated that he was instructed by the committee appointed to inquire into the conduct of JOHN SMITH, a Senator from the State of Ohio, to submit the following resolution; which was read and agreed to:

Resolved, That the committee appointed to inquire and report the facts relating to the conduct of John Smith, a Senator from the State of Ohio, be authorized to cause to be printed, under their inspection, all such documents and papers touching the subject-matter of the inquiries on which they have been appointed, as may appear necessary to the committee, previous to the presentation of the same to the Senate.

Mr. MOORE, from the committee to whom was referred the bill, entitled "An act authorizing the erection of a bridge over the river Potomac, within the District of Columbia," reported amendments; which were read, and ordered to lie for consideration.

The bill supplementary to the act, entitled "An act fixing the Military Peace Establishment of the United States," was read a second time, and the further consideration thereof postponed until to-morrow.

Mr. SMITH, of Maryland, presented the memorial of the Mayor of Georgetown, in behalf of the citizens thereof, remonstrating against the passage of the bill, entitled "An act authorizing the erection of a bridge over the river Potomac, within the District of Columbia;" and the memorial was read, and ordered to lie until the bill, to which it refers, be considered as in Committee of the Whole.

The Senate resumed the second reading of the bill making an appropriation for the more effectual defence of the ports and harbors of the United States, and ordered that the further consideration thereof be postponed until to-morrow.

TUESDAY, December 8.

Mr. ADAMS, from the committee to whom was referred, on the 3d instant, the bill, entitled "An

act to change the name of the district of Biddeford and Pepperelborough, in Massachusetts, to that of Saco," reported it without amendment. On the question, Shall it be read a third time? it was determined in the affirmative.

The Senate resumed, as in Committee of the Whole, the bill making an appropriation for the more effectual defence of the ports and harbors of the United States, and ordered that the further consideration thereof be postponed until to-morrow.

WEDNESDAY, December 9.

WILLIAM H. CRAWFORD, appointed a Senator by the Legislature of the State of Georgia, to fill the vacancy occasioned by the death of Abraham Baldwin, attended and produced his credentials, which were read, and the oath prescribed by law was administered to him.

The Senate resumed the second reading of the bill supplementary to an act, entitled "An act fixing the Military Peace Establishment of the United States."

Ordered, That this bill be recommitted to the original committee, consisting of Messrs. POPE, SMITH of Maryland, and BRADLEY, further to consider and report thereon.

The Senate resumed the amendments, reported by the select committee, to the bill, entitled "An act authorizing the erection of a bridge over the river Potomac, within the District of Columbia."

Ordered, That the bill and amendments be recommitted to the committee who reported them, further to consider and report thereon.

The bill, entitled "An act to change the name of the district of Biddeford and Pepperelborough, in Massachusetts, to that of Saco," was read the third time, and passed.

The Senate took into consideration the motion made on the 4th instant, that the Secretary of the Senate do engage an additional engrossing clerk; and disagreed thereto.

THURSDAY, December 10.

The several committees not having perfected their reports, the Senate adjourned.

FRIDAY, December 11.

Mr. MITCHILL, from the committee to whom was referred, on the 3d instant, the bill, entitled "An act extending the right of suffrage in the Mississippi Territory, and for other purposes," reported it without amendment.

Ordered, That the further consideration of this bill be the order of the day for Thursday next.

The Senate resumed, as in Committee of the Whole, the second reading of the bill making an appropriation for the more effectual defence of the ports and harbors of the United States; and ordered that the further consideration thereof be postponed to Monday next.

Mr. POPE, from the committee to whom was recommitted, on the 9th instant, the bill supplementary to an act, entitled "An act fixing the Military Peace Establishment of the United States," reported the bill without amendment.

Mr. MOORE, from the committee to whom was recommitted, on the 9th instant, the bill, entitled "An act authorizing the erection of a bridge over the river Potomac, within the District of Columbia," reported an amendment; which was read, and ordered to lie for consideration.

And on motion, the Senate adjourned.

MONDAY, December 14.

Mr. ADAMS presented the memorial of the merchants and others, of the town of Boston, praying some modification, suspension, or repeal, of the act, entitled "An act to prohibit the importation of certain goods, wares, and merchandise," passed the 18th day of April, 1806, so as to conform it to the existing circumstances of the United States; and the memorial was read and referred to Messrs. SMITH, of Maryland, ADAMS, SUMTER, GREGG, and GILMAN, to consider and report thereon.

On motion to refer the memorial of the merchants and others, of the city of Philadelphia, presented on the 27th of November last, to the same committee, it was determined in the affirmative—yeas 16, nays 13, as follows:

YEAS—Messrs. Adams, Anderson, Bradley, Crawford, Condit, Goodrich, Gregg, Hillhouse, Howland, Maclay, Mathewson, Pickering, Smith of New York, Sumter, Turner, and White.

NAYS—Messrs. Gaillard, Gilman, Kitchel, Milledge, Mitchill, Moore, Parker, Pope, Robinson, Smith of Maryland, Smith of Tennessee, Thruston, and Tiffin.

Mr. GREGG, from the committee to whom was referred, on the 27th November last, the bill entitled, "An act authorizing the purchase of certain copies of the Journals of Congress," reported the bill with amendments; which were read.

Ordered, That the bill making an appropriation for the more effectual defence of the ports and harbors of the United States be postponed.

The Senate resumed, as in Committee of the Whole, the second reading of the bill supplementary to an act, entitled "An act fixing the Military Peace Establishment of the United States; and the bill having been amended, was reported to the House accordingly. On the question, Shall the bill be engrossed and read a third time as amended? it was determined in the affirmative.

A message from the House of Representatives, informed the Senate that the House have passed the bill, entitled "An act to appropriate money for the construction of an additional number of gunboats," with amendments, in which they request the concurrence of the Senate.

The Senate resumed, as in Committee of the Whole, the consideration of the amendment reported by the select committee, to the bill, entitled "An act authorizing the erection of a bridge over the river Potomac, in the District of Columbia;" and the report of the select committee having been amended, was agreed to; and, after debate, the Senate adjourned.

TUESDAY, December 15.

On motion by Mr. BRADLEY,

Resolved, That a committee be appointed to inquire whether any, and what, further provisions are necessary in addition to, and alteration of, an act, entitled "An act to establish the judicial courts of the United States," with leave to report by bill or otherwise; and,

Resolved, That Messrs. BRADLEY, ANDERSON, and GREGG, be the committee.

The Senate resumed the second reading of the bill, entitled "An act authorizing the erection of a bridge over the river Potomac, in the District of Columbia."

Ordered, That the further consideration thereof be postponed.

The Senate took into consideration the amendments reported by the special committee to whom was referred the bill, entitled "An act authorizing the purchase of certain copies of the Journals of Congress;" and the bill having been by the President reported as amended, on the question, Shall the bill be read a third time as amended? it was determined in the negative. So the bill was lost.

The bill supplementary to an act, entitled "An act fixing the Military Peace Establishment of the United States," was read the third time.

Ordered, That this bill be recommitted to the original committee, further to consider and report thereon; and that Messrs. ANDERSON, and SUMTER be added to the committee.

And on motion, the Senate adjourned.

WEDNESDAY, December 16.

The Senate resumed the second reading of the bill, entitled "An act authorizing the erection of a bridge over the river Potomac, in the District of Columbia; and, a motion was made, by Mr. ADAMS, to amend the 14th section. Whereupon,

Ordered, That the bill, together with the amendment, be taken into consideration to-morrow, as in Committee of the Whole.

On motion by Mr. MILLEDGE,

Ordered, That the articles of agreement and cession, entered into on the twenty-fourth of April, 1802, between the Commissioners of the United States and those of Georgia, be printed for the use of the Senate.

And on motion, the Senate adjourned.

THURSDAY, December 17.

The Senate resumed, as in Committee of the Whole, the second reading of the bill, entitled "An act extending the right of suffrage in the Mississippi Territory, and for other purposes;" and, after debate, the further consideration thereof was postponed until Monday next.

Mr. POPE, from the committee to whom was recommitted the bill supplementary to an act, entitled "An act fixing the Military Peace Establishment of the United States," reported the bill with amendments; which were read and ordered to be for consideration.

And on motion, the Senate adjourned.

FRIDAY, December 18.

EMBARGO.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

The communications now made, showing the great and increasing dangers with which our vessels, our seamen, and merchandise, are threatened on the high seas and elsewhere, from the belligerent Powers of Europe, and it being of the greatest importance to keep in safety these essential resources, I deem it my duty to recommend the subject to the consideration of Congress, who will doubtless perceive all the advantages which may be expected from an inhibition of the departure of our vessels from the ports of the United States.

Their wisdom will also see the necessity of making every preparation for whatever events may grow out of the present crisis. TH. JEFFERSON.

DECEMBER 18, 1807.

Ordered, That the message, together with the papers therein referred to, be committed to Messrs. SMITH, of Maryland, ADAMS, ANDERSON, BRADLEY, and GREGG, to consider and report thereon; and that the same be considered as confidential.

Mr. SMITH, from the abovementioned committee, stated that he was instructed to ask leave to report by bill. And leave having been given, he reported in part a bill laying an embargo on all ships and vessels in the ports and harbors of the United States: and the bill was read and ordered to the second reading.

On motion, that the bill be now read the second time, it was objected to, as being contrary to the 12th rule for conducting business in the Senate. Whereupon, the following motion was made, by Mr. SMITH of Maryland, and agreed to:

Resolved, That so much of the 12th rule for doing business in the Senate, as requires that three readings shall be on three different days, unless the Senate unanimously direct otherwise, be suspended for three days.

And the bill was read the second time, as in Committee of the Whole, and, by the President, reported to the House without amendment; on the question, Shall this bill be engrossed and now read the third time it was determined in the affirmative—yeas 22, nays 7, as follows:

YEAS—Messrs. Adams, Anderson, Bradley, Condit, Gaillard, Gregg, Howland, Kitchel, Mathewson, Milledge, Mitchill, Moore, Parker, Pope, Robinson, Smith of Maryland, Smith of New York, Smith of Tennesse, Thruston, Tiffin, and Turner.

NAYS—Messrs. Crawford, Goodrich, Hillhouse, Maclay, Pickering, Sumter, and White.

And Mr. GREGG having reported the bill correctly engrossed, it was read the third time; on motion, to postpone the further consideration of the bill until Monday next, it was passed in the negative.

On motion, by Mr. CRAWFORD, that this bill be postponed until to-morrow, it was passed in the negative—yeas 12, nays 16, as follows:

YEAS—Messrs. Crawford, Gaillard, Goodrich, Hill-

house, Maclay, Mathewson, Milledge, Pickering, Pope, Thruston, Turner, and White.

NAYS—Messrs. Adams, Anderson, Bradley, Condit, Gilman, Gregg, Howland, Kitchel, Mitchill, Moore, Parker, Robinson, Smith of Maryland, Smith of New York, Smith of Tennessee, and Tiffin.

On the question to agree to the final passage of this bill, it was determined in the affirmative—yeas 22, nays 6, as follows:

YEAS—Messrs. Adams, Anderson, Bradley, Condit, Gaillard, Gilman, Gregg, Howland, Kitchel, Mathewson, Milledge, Mitchill, Moore, Parker, Pope, Robinson, Smith of Maryland, Smith of New York, Smith of Tennessee, Thruston, Tiffin, and Turner.

NAYS—Messrs. Crawford, Goodrich, Hillhouse, Maclay, Pickering, and White.

So it was, *Resolved*, That this bill pass, and that the title thereof be "An act laying an embargo on all ships and vessels in the ports and harbors of the United States."

Ordered, That the Secretary, confidentially, request the concurrence of the House of Representatives in this bill.

SATURDAY, December 19.

The Senate took into consideration, as in Committee of the Whole, the amendments reported to the bill supplementary to an act, entitled "An act fixing the Military Peace Establishment of the United States;" and the PRESIDENT having reported the bill to the House amended, on the question, Shall the bill be engrossed and read a third time as amended? it passed in the affirmative.

The Senate took into consideration, as in Committee of the Whole, the amendment proposed by Mr. ADAMS to the 14th section of the bill, entitled "An act authorizing the erection of a bridge over the river Potomac, in the District of Columbia;" which was amended, and agreed to; and the bill having been further amended, two new sections were submitted by Mr. ANDERSON, for consideration.

Ordered, That the further consideration of the bill, together with the proposed amendments, be postponed until Monday next.

The Senate adjourned to 6 o'clock in the evening.

SATURDAY EVENING, 6 *o'clock*.

The Senate assembled; and, on motion, adjourned to Monday morning.

MONDAY, December 21.

Mr. REED, from the State of Maryland, attended.

The Senate resumed, as in Committee of the Whole, the second reading of the bill, entitled "An act authorizing the erection of a bridge over the river Potomac, in the District of Columbia," together with the proposed amendments thereto, on motion, to postpone the further consideration of the bill to the first Monday in December next, it passed in the negative; on motion, to postpone the further consideration of the bill to the first Tuesday in January next, it passed in the negative. And the two new sections proposed having been disagreed to, the President reported the bill amended.

On the question, Shall this bill be read a third time as amended? it was determined in the affirmative.

The bill supplementary to an act, entitled "An act fixing the Military Peace Establishment of the United States," was read the third time; and the blank having been filled, on motion, it was agreed that the further consideration thereof be postponed.

The Senate resumed, as in Committee of the Whole, the second reading of the bill, entitled "An act extending the right of suffrage in the Mississippi Territory, and for other purposes;" and Mr. MOORE submitted an amendment to the first section for consideration; and, on motion, it was agreed that the further consideration of the bill and amendment should be postponed.

TUESDAY, December 22.

A confidential message from the House of Representatives informed the Senate that the House have passed the bill, entitled "An act laying an embargo on all ships and vessels in the ports and harbors of the United States," with amendments; in which they request the concurrence of the Senate.

The Senate took into consideration the amendments of the House of Representatives to the bill last mentioned; and concurred therein.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act supplementary to an act, entitled 'An act for fortifying the ports and harbors of the United States, and for building gunboats,' in which they request the concurrence of the Senate.

Mr. GREGG reported, from the committee, that they had examined and found correctly engrossed the amendments to the bill, entitled "An act authorizing the erection of a bridge over the river Potomac, in the District of Columbia."

The bill last mentioned was read the third time; and, after debate, on motion, it was agreed to postpone the consideration of the bill, for the purpose of receiving the report of a committee; and Mr. SMITH, of Maryland, from the committee to whom was referred the Message from the President of the United States of the 18th December, made a further report, in part: Whereupon,

Ordered, That 500 copies of the Message, and certain documents therein referred to, also, of "the act laying an embargo on all ships and vessels in the ports and harbors of the United States," be printed for the use of the Senate; and that the injunction of secrecy on the Message and papers therein referred to, also on the proceedings in relation to the last mentioned act, be taken off.

On motion, to reconsider the order for publication, the Senate adjourned.

WEDNESDAY, December 23.

The bill, entitled "An act supplementary to an act, entitled 'An act for fortifying the ports and

harbors of the United States, and for building gunboats," brought up yesterday from the House of Representatives, was read. On motion, it was agreed, by unanimous consent, to dispense with the rule, and that this bill be now read the second time.

Ordered, That it be referred to Messrs. MITCHILL, SUMTER, ADAMS, MILLEDGE, and ROBINSON, the committee to whom was referred, on the 16th of November last, that part of the Message of the President of the United States which relates to the protection of the seaport towns and harbors of the United States, to consider and report thereon.

The Senate resumed, as in Committee of the Whole, the second reading of the bill, entitled "An act extending the right of suffrage in the Mississippi Territory, and for other purposes;" and the consideration thereof was then further postponed.

THURSDAY, December 24.

The Senate resumed the third reading of the bill supplementary to an act, entitled "An act fixing the Military Peace Establishment of the United States;" and

Resolved, That this bill pass, and that the title thereof be "An act supplementary to an act, entitled 'An act fixing the Military Peace Establishment of the United States."

Mr. MITCHILL, from the committee to whom yesterday was referred the bill, entitled "An act supplementary to an act, entitled 'An act for fortifying the ports and harbors of the United States, and for building gunboats," reported the bill without amendment.

Ordered, That the further consideration thereof be postponed until Saturday next.

On motion, that the further consideration of the bill, entitled "An act authorizing the erection of a bridge over the river Potomac, in the District of Columbia," be postponed until the second Tuesday in January next—a motion was made to amend the motion, and strike out "second Tuesday in January," and insert "first Monday in December;" and a division of the question was called for; and on the question for striking out, it was determined in the negative. And the original motion was agreed to.

SATURDAY, December 26.

The Senate assembled, and a quorum not attending, adjourned till Monday morning.

MONDAY, December 28.

The PRESIDENT communicated a report of the Attorney General of the United States, in pursuance of a resolution of the 6th of February last, on the table of fees and compensation paid in all the States composing the Union, except the States of Virginia and Kentucky; which were read, and referred to Messrs. BRADLEY, WHITE, and CONDIT, to consider and report thereon to the Senate.

The PRESIDENT communicated the petition of Bartholomew Berry, a wounded soldier in the Revolutionary war; also, wounded in the army under the command of the late General Wayne, and praying relief; and the petition was read, and referred to Messrs. REED, GREGG, and BRADLEY, to consider and report thereon.

The Senate resumed, as in Committee of the Whole, the second reading of the bill, entitled "An act supplementary to an act, entitled 'An act for fortifying the ports and harbors of the United States, and for building gunboats;" and Mr. MILLEDGE submitted sundry amendments for consideration; and, on motion that the bill, together with the proposed amendments, be recommitted to the original committee, the Senate were equally divided, and the PRESIDENT determined the question in the affirmative.

Ordered, That Messrs. GREGG and TIFFIN be added to the committee.

TUESDAY, December 29.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to extend certain privileges, as therein mentioned, to Anthony Boucherie;" also, a bill, entitled "An act supplemental to an act, entitled 'An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee;" in which they request the concurrence of the Senate.

The bill first mentioned in the message was read, and it was agreed, by unanimous consent, to dispense with the rule, and that this bill be now read the second time.

Ordered, That it be referred to Messrs. TIFFIN, CONDIT, and GREGG, to consider and report thereon.

The bill last mentioned in the message was read, and ordered to the second reading.

The Senate resumed, as in Committee of the Whole, the second reading of the bill, entitled "An act extending the right of suffrage in the Mississippi Territory, and for other purposes," together with the proposed amendment; and, after having agreed to amend the amendment, the Senate adjourned.

WEDNESDAY, December 30.

Mr. MITCHILL, from the committee to whom was recommitted the bill, entitled "An act supplementary to an act, entitled "An act for fortifying the ports and harbors of the United States, and for building gunboats," reported amendments; which were agreed to.

On motion, by Mr. CRAWFORD, further to amend the bill, as follows:

"*Provided*, That the following sums be laid out and expended for the purposes above mentioned, at the places and within the limits hereinafter enumerated, viz.: At New Orleans, sixty thousand dollars: within the States of Georgia, South Carolina, and North Carolina, two hundred and fifty-two thousand dollars: upon the Chesapeake and its waters, one hundred and sixty thousand dollars: within the Delaware bay and

river, New Jersey, and New York, three hundred thousand dollars: within the States of Connecticut and Rhode Island, thirty-one thousand dollars: within Massachusetts and New Hampshire, one hundred and thirty-five thousand dollars: and for other places not enumerated, or in addition to those places above-mentioned, sixty-two thousand dollars:"

It was determined in the negative—yeas 11, nays 19, as follows:

YEAS—Messrs. Anderson, Crawford, Gaillard, Goodrich, Hillhouse, Maclay, Milledge, Pickering, Sumter, Turner, and White.

NAYS—Messrs. Adams, Bradley, Condit, Gilman, Gregg, Howland, Kitchel, Mathewson, Mitchill, Parker, Pope, Reed, Robinson, Smith of New York, Smith of Tennessee, and Tiffin.

Ordered, That the consideration of the bill be further postponed.

The bill, entitled "An act supplemental to an act, entitled 'An act regulating the grants of land and providing for the disposal of the lands of the United States south of the State of Tennessee," was read the second time, and referred to Messrs. CRAWFORD, BRADLEY, and GREGG, to consider and report thereon.

On motion, the second reading of the bill, entitled "An act extending the right of suffrage in the Mississippi Territory, and for other purposes," was further postponed.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I communicate to Congress the enclosed letters from Governor Hull, respecting the Indians in the vicinity of Detroit, residing within our lines. They contain information of the state of things in that quarter which will properly enter into their view in estimating the means to be provided for the defence of our country generally. TH. JEFFERSON.

DECEMBER 30, 1807.

The Message and papers therein mentioned were read, and ordered to lie for consideration.

THURSDAY, December 31.

Mr. TIFFIN, from the committee to whom was referred the bill, entitled "An act to extend certain privileges, as therein mentioned, to Anthony Boucherie," reported the bill without amendment; and the bill was ordered to a third reading.

CASE OF JOHN SMITH.

Mr. ADAMS stated that the committee appointed on the 27th November last, "to inquire whether it be compatible with the honor and privileges of this House that JOHN SMITH, a Senator from the State of Ohio, against whom bills of indictment were found at the Circuit Court of Virginia, held at Richmond in August last, for treason and misdemeanor, should be permitted any longer to have a seat therein," were ready to report: and he made the following motion, which was read and agreed to:

Ordered, That John Smith, a Senator from the State of Ohio, be notified by the Vice President to attend in his place.

The VICE PRESIDENT accordingly notified Mr. SMITH in the words following:

SIR: You are hereby required to attend the Senate in your place without delay.

By order of the Senate:

GEO. CLINTON,
President of the Senate.

JOHN SMITH, Esq., *Senator from the State of Ohio.*

And Mr. SMITH attended.

Whereupon, Mr. ADAMS made a report from the committee last mentioned; and the report was read, and three hundred copies thereof were ordered to be printed for the use of the Senate.

The report is as follows:

Your committee are of opinion, that the conspiracy of Aaron Burr and his associates against the peace, union, and liberties of these States, is of such a character, and that its existence is established by such a mass of concurring and mutually corroborative testimony, that it is incompatible not only with the honor and privileges of this House, but with the deepest interests of this nation, that any person engaged in it should be permitted to hold a seat in the Senate of the United States.

Whether the facts, of which the committee submit herewith such evidence as, under the order of the Senate, they have been able to collect, are sufficient to substantiate the participation of Mr. Smith in that conspiracy, or not, will remain for the Senate to decide.

The committee submit also to the consideration of the Senate, the correspondence between Mr. Smith and them, through their chairman, in the course of their meetings. The committee have never conceived themselves invested with authority to try Mr. Smith. Their charge was to report an opinion relating to the honor and privileges of the Senate, and the facts relating to the conduct of Mr. Smith. Their opinion, indeed, cannot be expressed in relation to the privilege of the Senate, without relating, at the same time, to Mr. Smith's right of holding a seat in this body; but, in that respect, the authority of the committee extends only to proposal, and not to decision. But as he manifested a great solicitude to be heard before them, they obtained permission from the Senate to admit his attendance, communicated to him the evidence in their possession, by which he was inculpated, furnished him, in writing, with the questions arising from it, which appeared to them material, and received from him the information and explanations herewith submitted as part of the facts reported. But Mr. Smith has claimed, as a right, to be heard in his defence by counsel, to have compulsory process for witnesses, and to be confronted with his accusers, as if the committee had been a circuit court of the United States. But it is before the Senate itself that your committee conceived it just and proper that Mr. Smith's defence of himself should be heard. Nor have they conceived themselves bound in this inquiry by any other rules than those of natural justice and equity, due to a brother Senator on the one part, and to their country on the other.

Mr. Smith represents himself, on this inquiry, as solitary, friendless, and unskilled, contending for rights which he intimates are denied him; and the defender of Senatorial privileges which he seems apprehensive will be refused him by Senators, liable, so long as they hold their offices, to have his case made their own. The committee are not unaware that, in the vicissitudes of

human events, no member of this body can be sure that his conduct will never be made a subject of inquiry and decision before the assembly to which he belongs. They are aware that, in the course of proceeding which the Senate may now sanction, its members are marking out a precedent which may hereafter apply to themselves. They are sensible that the principles upon which they have acted ought to have the same operation upon their own claims to privilege as upon those of Mr. Smith; the same relation to the rights of their constituents, which they have to those of the Legislature which he represents. They have deemed it their duty to advance in the progress of their inquiry with peculiar care and deliberation. They have dealt out to Mr. Smith that measure, which, under the supposition of similar circumstances, they would be content to find imparted to themselves; and they have no hesitation in declaring that, under such imputations, colored by such evidence, they should hold it a sacred obligation to themselves, to their fellow Senators, and to their country, to meet them by direct, unconditional acknowledgment or denial, without seeking a refuge from the broad face of day in the labyrinth of technical forms.

In examining the question whether these forms of judicial proceedings, or the rules of judicial evidence, ought to be applied to the exercise of that censorial authority which the Senate of the United States possesses over the conduct of its members, let us assume, as the test of their application, either the dictates of unfettered reason, the letter and spirit of the Constitution, or precedents, domestic or foreign, and your committee believe that the result will be the same; that the power of expelling a member must, in its nature, be discretionary, and in its exercise always more summary than the tardy process of judicial tribunals.

The power of expelling a member for misconduct results, on the principles of common sense, from the interest of the nation, that the high trust of legislation should be invested in pure hands. When the trust is elective, it is not to be presumed that the constituent body will commit the deposite to the keeping of worthless characters. But when a man, whom his fellow-citizens have honored with their confidence, on the pledge of a spotless reputation, has degraded himself by the commission of infamous crimes, which become suddenly and unexpectedly revealed to the world, defective indeed would be that institution which should be impotent to discard from its bosom the contagion of such a member; which should have no remedy of amputation to apply until the poison had reached the heart.

The question upon the trial of a criminal cause, before the courts of common law, is not between guilt and innocence, but between guilt and the possibility of innocence. If a doubt can possibly be raised, either by the ingenuity of the party or of his counsel, or by the operation of general rules in their unforeseen application to particular cases, that doubt must be decisive for acquittal, and the verdict of not guilty, perhaps, in nine cases out of ten, means no more than that the guilt of the party has not been demonstrated in the precise, specific, and narrow forms prescribed by law. The humane spirit of the laws multiplies the barriers for the protection of innocence, and freely admits that these barriers may be abused for the shelter of guilt. It avows a strong partiality favorable to the person upon trial, and acknowledges the preference that ten guilty should escape rather than that one innocent should suffer. The interest of the public that a particular crime should be punished, is but as one to ten, compared with the interest of the party, that innocence should be spared. Acquittal only restores the party to the common rights of every other citizen; it restores him to no public trust; it invests him with no public confidence; it substitutes the sentence of mercy for the doom of justice; and to the eyes of impartial reason, in the great majority of cases, must be considered rather as a pardon than a justification.

But when a member of a legislative body lies under the imputation of aggravated offences, and the determination upon his cause can operate only to remove him from a station of extensive powers, and important trust, this disproportion between the interest of the public and the interest of the individual disappears; if any disproportion exists, it is of an opposite kind. It is not better that ten traitors should be members of this Senate than that one innocent man should suffer expulsion. In either case, no doubt, the evil would be great. But, in the former, it would strike at the vitals of the nation; in the latter it might, though deeply to be lamented, only be the calamity of an individual.

By the letter of the Constitution, the power of expelling a member is given to each of the two Houses of Congress, without any limitation other than that which requires a concurrence of two-thirds of the votes to give it effect.

The spirit of the Constitution is, perhaps, in no respect more remarkable than in the solicitude which it has manifested to secure the purity of the Legislature by that of the elements of its composition. A qualification of age is made necessary for the members to insure the maturity of their judgment; a qualification of long citizenship, to insure a community of interests and affections between them and their country; a qualification of residence, to provide a sympathy between every member and the portion of the Union from which he is delegated; and to guard, as far as regulation can guard, against every bias of personal interest, and every hazard of interfering duties, it has made every member of Congress ineligible to office which he contributed to create, and every officer of the Union incapable of holding a seat in Congress. Yet, in the midst of all this anxious providence of legislative virtue, it has not authorized the constituent body to recall in any case its Representative. It has not subjected him to removal by impeachment; and when the darling of the people's choice has become their deadliest foe, can it enter the imagination of a reasonable man that the sanctuary of their legislation must remain polluted with his presence, until a court of common law, with its pace of snail, can ascertain whether his crime was committed on the right or on the left bank of a river; whether a puncture of difference can be found between the words of the charge and the words of the proof; whether the witnesses of his guilt should or should not be heard by his jury; and whether he was punishable, because present at an overt act, or intangible to public justice, because he only contrived and prepared it? Is it conceivable that a traitor to that country which has loaded him with favors, guilty to the common understanding of all mankind, should be suffered to return unquestioned to that post of honor and confidence, where, in the zenith of his good fame, he had been placed by the esteem of his countrymen, and in defiance of their wishes, in mockery of their fears, surrounded by the public indignation, but inaccessible to its bolt, pursue the purposes of treason in the heart of

the national councils? Must the assembled rulers of the land listen with calmness and indifference, session after session, to the voice of notorious infamy, until the sluggard step of municipal justice can overtake his enormities? Must they tamely see the lives and fortunes of millions, the safety of present and future ages, depending upon his vote, recorded with theirs, merely because the abused benignity of general maxims may have remitted to him the forfeiture of his life?

Such, in very supposable cases, would be the unavoidable consequences of a principle which should offer the crutches of judicial tribunals as an apology for crippling the Congressional power of expulsion. Far different, in the opinion of your committee, is the spirit of our Constitution. They believe that the very purpose for which this power was given was to preserve the Legislature from the first approaches of infection. That it was made discretionary because it could not exist under the procrastination of general rules; that its process must be summary, because it would be rendered nugatory by delay.

Passing from the Constitutional view of the subject to that which is afforded by the authority of precedent, your committee find that, since the establishment of our present National Legislature, there has been but one example of expulsion from the Senate. In that case, the member implicated was called upon, in the first instance, to answer whether he was the author of a letter, the copy of which only was produced, and the writing of which was the cause of his expulsion. He was afterwards requested to declare whether he was the author of the letter itself, and declining, in both cases, to answer, the fact of his having written it was established by a comparison of his handwriting, and by the belief of persons who had seen him write, upon inspection of the letter. In all these points the committee perceive the admission of a species of evidence, which, in courts of criminal jurisdiction, would be excluded, and, in the resolution of expulsion, the Senate declared the person inculpated *guilty of a high misdemeanor*, although no presentment or indictment had been found against him, and no prosecution at law was ever commenced upon the case.

This event occurred in July, 1797. About fifteen months before that time, upon an application from the Legislature of Kentucky, requesting an investigation by the Senate of a charge against one of the members from that State, of perjury, which had been made in certain newspaper publications, but for which no prosecution had been commenced, the Senate did adopt, by a majority of sixteen votes to eight, the report of a committee, purporting that the Senate had no *jurisdiction* to try the charge, and that the memorial of the Kentucky Legislature should be dismissed. There were, indeed, very sufficient reasons of a different kind assigned in the same report, for not pursuing the investigation, in that particular case, any further; and your committee believe that, in the reasoning of that report, some principles were assumed and some inferences drawn, which were altogether unnecessary for the determination of that case, which were adopted without a full consideration of all their consequences, and the inaccuracy of which was clearly proved by the departure from them in the instance which was so soon afterwards to take place. It was the first time that a question of expulsion had ever been agitated in Congress, since the adoption of the Constitution. And the subject being thus entirely new, was considered perhaps too much with reference to the particular circumstances of the moment, and not enough upon the numerous contingencies to which the general question might apply. Your committee state this opinion with some confidence, because of the sixteen Senators who, in March, 1796, voted for the report dismissing the memorial of the Kentucky Legislature; eleven, on the subsequent occasion, in July, 1797, voted also for that report, which concluded with a resolution for the expulsion of Mr. Blount. The other five were no longer present in the Senate. Yet, if the principles advanced in the first report had been assumed as the ground of proceeding at the latter period, the Senate would have been as impotent of jurisdiction upon the offence of Mr. Blount as they had supposed themselves upon the allegation against Mr. Marshall.

Those parts of the fifth and sixth articles, amendatory to the Constitution, upon which the report in the case of Mr. Marshall appears to rely for taking away the jurisdiction of the Senate, your committee suppose can only be understood as referring to prosecutions at law; to suppose that they were intended as restrictions upon powers expressly granted by the Constitution to the Legislature, or either of its branches, would, in a manner, annihilate the power of impeachment as well as that of expulsion. It would lead to the absurd conclusion that the authority given for the purpose of removing iniquity from the seats of power, should be denied its exercise in precisely those cases which most loudly call for its energies. It would present the singular spectacle of a Legislature vested with powers of expelling its members, of impeaching, removing, and disqualifying public officers, for trivial transgressions beneath the cognizance of the law, yet forbidden to exert them against capital or infamous crimes.

Those two articles were in substance borrowed from similar regulations contained in that justly celebrated statute, which for so many ages has been distinguished by the name of the Great Charter of England. Yet in that country, where they are recognised as the most solid foundations of the liberties of the nation, they have never been considered as interfering with the power of expelling a member, exercised at all times by the House of Commons; a power which there, however, rests only upon Parliamentary usage, and has never been bestowed, as in the Constitution of the United States, by any act of supreme legislation. From a number of precedents which have been consulted, it is found that the exercise of this authority there has always been discretionary, and its process always far otherwise than compendious in the prosecutions before the judicial courts. So far, indeed, have they been from supposing a conviction at law necessary to precede a vote of expulsion, that, in one instance, a resolution to demand a prosecution appears immediately after the adoption of the resolution to expel. In numerous cases the member submits to examination, adduces evidence in his favor, and has evidence produced against him, with or without formal authentication; and the discretion of the House is not even restricted by the necessary concurrence of more than a bare majority of the votes.

The provision in our Constitution which forbids the expulsion of a member by an ordinary majority, and requires for this act of rigorous and painful duty the assent of two-thirds, your committee consider as a wise and sufficient guard against the possible abuse of this legislative discretion. In times of heat and violent party spirit, the rights of the minority might not always be duly respected, if a majority could expel their

members under no other control than that of their own discretion. The operation of this rule is of great efficacy, both over the proceedings of the whole body, and over the conduct of every individual member. The times when the most violent struggles of contending parties occur—when the conflict of opposite passions is most prone to excess—are precisely the times when the numbers are most equally divided; when the majority amounts to the proportion of two-thirds, the security in its own strength is of itself a guard against extraordinary stretches of power; when the minority dwindles to the proportion of one-third, its consciousness of weakness dissuades from any attempts to encroach upon the rights of the majority, which might provoke retaliation. But if expulsion were admissible only as a sequel to the issue of a legal prosecution, or upon the same principles and forms of testimony which are established in the criminal courts, your committee can see no possible reason why it should be rendered still more imbecile by the requisition of two-thirds to give it effect.

It is now the duty of your committee to apply the principles which they have here endeavored to settle and elucidate, to the particular case upon which the Senate have directed them to report. The bills of indictment found against Mr. Smith, at the late session of the circuit court of the United States at Richmond, (copies of which are herewith submitted,) are precisely similar to those found against Aaron Burr. From the volume of printed evidence communicated by the President of the United States to Congress, relating to the trial of Aaron Burr, it appears that a great part of the testimony which was essential to his conviction upon the indictment for treason, was withheld from the jury upon an opinion of the court, that Aaron Burr, not having been *present* at the overt act of treason alleged in the indictment, no testimony relative to his conduct or declarations elsewhere, and subsequent to the transactions on Blannerhasset's island, could be admitted. And, in consequence of this suppression of evidence, the traverse jury found a verdict "that Aaron Burr was not proved to be guilty, under that indictment, by any evidence submitted to them." It was also an opinion of the court, that none of the transactions, of which evidence was given on the trial of Aaron Burr, did amount to an overt act of levying war, and, of course, that they did not amount to treason. These decisions, forming the basis of the issue upon the trials of Burr, anticipated the event which must have awaited the trials of the bills against Mr. Smith, who, from the circumstances of his case, must have been entitled to the benefit of their application; they were the sole inducements upon which the counsel for the United States abandoned the prosecution against him.

Your committee are not disposed now to question the correctness of these decisions on a case of treason before a court of criminal jurisdiction. But whether the transactions proved against Aaron Burr did or did not amount, in technical language, to an overt act of levying war, your committee have not a scruple of doubt on their minds that, but for the vigilance and energy of the Government, and of faithful citizens under its directions, in arresting their progress and in crushing his designs, they would, in a very short lapse of time, have terminated not only in a war, but in a war of the most horrible description, in a war at once foreign and domestic. As little hesitation have your committee in saying, that, if the daylight of evidence, combining one vast complicated intention, with overt acts innumerable, be not excluded from the mind by the curtain of artificial rules, the simplest understanding cannot but see what the subtlest understanding cannot disguise, crimes before which ordinary treason whitens into virtue; crimes of which war is the mildest feature. The debauchment of our Army, the plunder and devastation of our own and foreign territories, the dissolution of our national Union, and the root of interminable civil war, were but the means of individual aggrandizement, the steps to projected usurpation. If the ingenuity of a demon were tasked to weave, into one composition, all the great moral and political evils which could be inflicted upon the people of these States, it could produce nothing more than a texture of war, dismemberment, and despotism.

Of these designs, a grand jury, composed of characters as respectable as this nation can boast, have, upon the solemnity of their oaths, charged John Smith with being an accomplice. The reasons upon which the trial of this charge has not been submitted to the verdict of a jury, have been shown by your committee, and are proved by the letter from the Attorney of the United States, for the district of Virginia, herewith reported. And your committee are of opinion that the dereliction of the prosecution on these grounds cannot, in the slightest degree, remove the imputation which the accusations of the grand jury have brought to the door of Mr. Smith.

Your committee will not permit themselves to comment upon the testimony which they submit herewith to the Senate; nor upon the answers which Mr. Smith has given as sufficient for his justification. Desirous as the committee have been that this justification might be complete, anxiously as they wished for an opportunity of declaring their belief of his innocence, they can neither control nor dissemble the operation of the evidence upon their minds; and, however painful to their feelings, they find themselves compelled by a sense of duty, paramount to every other consideration, to submit to the Senate, for their consideration, the following resolution:

Resolved, That John Smith, a Senator from the State of Ohio, by his participation in the conspiracy of Aaron Burr against the *peace*, *union*, and *liberties*, of the people of the United States, has been guilty of conduct incompatible with his duty and station as a Senator of the United States. And that he be therefor, and hereby is, expelled from the Senate of the United States.

The documents accompanying the report are very voluminous. Among them is the answer of Mr. JOHN SMITH, covering ninety-six manuscript pages.

Mr. ADAMS also offered a further report, made in consequence of a supplementary instruction of the Senate. This report states the existence of an allegation against JOHN SMITH, that, since his election as a Senator, he had taken an oath of allegiance to the King of Spain. On inquiry, the committee consider the oath as having been taken, but previously to his election. They conclude with the opinion that it is unnecessary to take further order on this charge.

The first report was ordered to be printed. On the printing of Mr. SMITH's answer, a short and desultory conversation took place. A part of that answer goes to implicate the character of Judge Nimmo, and the committee being of opinion that this part of the answer was altogether irrelevant

to the charges against Mr. S., it was thought by them unnecessary and improper uselessly to criminate Judge Nimmo by making the publication, leaving it, however, to the discretion of the Senate. This conversation was arrested by the reading of the whole paper, and others connected with it.

The motion to print Mr. SMITH'S answer was then renewed and insisted upon by Mr. HILLHOUSE. It was opposed by Messrs. ADAMS, POPE, BRADLEY, and CRAWFORD, on the ground that it contained observations relative to Judge Nimmo, altogether irrelevant; that these, together with accompanying letters, related to his private life while in England, and that it would be highly improper for the Senate to sanction such a publication, especially in the case of one who could not be heard before them, in vindication of his character. It was, finally, on the suggestion of Mr. GOODRICH, determined to return the answer to Mr. SMITH, that he might expunge the exceptionable matter. In this Mr. SMITH acquiesced; when the Senate adjourned about 4 o'clock.

MONDAY, January 4, 1808.

JAMES A. BAYARD from the State of Delaware attended.

A message from the House of Representatives, informed the Senate that the House have passed a bill, entitled "An act supplementary to the act, entitled 'An act laying an embargo on all ships and vessels in the ports and harbors of the United States,'" in which they request the concurrence of the Senate.

The bill was read and ordered to the second reading.

The PRESIDENT communicated a letter from JOHN SMITH, a Senator from the State of Ohio; which was read.

Mr. ADAMS laid before the Senate a letter from Mr. SMITH, directed to the chairman of the Committee of Inquiry, appointed 27th November; which letter Mr. S. requested might be considered as a part of his answer; and the letter was read.

The bill, entitled "An act to extend certain privileges, as therein mentioned, to Anthony Boucherie," was read the third time and passed.

The Senate resumed, as in Committee of the Whole, the second reading of the bill, entitled "An act supplementary to an act, entitled 'An act for fortifying the ports and harbors of the United States, and for building gunboats;'" and the President having reported the bill to the House amended, it was ordered to the third reading as amended.

The Senate resumed, as in Committee of the Whole, the second reading of the bill, entitled "An act extending the right of suffrage in the Mississippi Territory, and for other purposes;" and, on motion, to strike out of section 1, lines 6 and 7 of the bill, these words: "and having paid 'a county or territorial tax, assessed at least six 'months previous to such elections;" and insert, 'and who has a legal or equitable title to a tract 'of land, by virtue of any act of Congress, or who 'may become the purchaser of any tract of land 'from the United States, of the quantity of fifty 'acres, or who may hold in his own right a town 'lot, of the value of one hundred dollars, within 'the said territory:"

A division was called for; and, on the question for striking out, it was determined in the affirmative—yeas 20, nays 11, as follow:

YEAS—Messrs. Bayard, Bradley, Crawford, Goodrich, Gregg, Hillhouse, Maclay, Mathewson, Milledge, Mitchill, Moore, Pickering, Smith of Maryland, Smith of New York, Smith of Tennessee, Sumter, Thruston, Turner, and White.

NAYS—Messrs. Adams, Anderson, Condit, Gilman, Howland, Kitchel, Parker, Pope, Reed, Robinson, and Tiffin.

On motion to insert, at the end of the third section, the following:

"*Provided*, That the provisions of this act shall not take effect, until the assent of the Legislature of the State of Georgia shall be given thereto:"

It passed in the negative—yeas 3, nays 27, as follows:

YEAS—Messrs. Crawford, Milledge, and Turner.

NAYS—Messrs. Adams, Anderson, Bayard, Bradley, Condit, Gaillard, Gilman, Goodrich, Gregg, Hillhouse, Howland, Kitchel, Maclay, Mathewson, Moore, Parker, Pickering, Pope, Reed, Robinson, Smith of Maryland, Smith of New York, Smith of Tennessee, Sumter, Thruston, Tiffin, and White.

And the PRESIDENT having reported the bill, amended in the first and second sections, it was ordered to the third reading as amended.

TUESDAY, January 5.

Mr. BRADLEY, from the committee to whom was referred the bill, entitled "An act to incorporate the Trustees of the Baptist Church in the City of Washington," reported it with amendments; which were read; and ordered to lie for consideration.

The bill, entitled "An act supplementary to the act, entitled 'An act laying an embargo on all ships and vessels in the ports and harbors of the United States,'" was read the second time and referred to Messrs. SMITH of Maryland, ADAMS, and GAILLARD, to consider and report thereon.

The bill, entitled "An act supplementary to an act, entitled 'An act for fortifying the ports and harbors of the United States, and for building gunboats,'" was read the third time and passed, with amendments.

The bill entitled "An act extending the right of suffrage in the Mississippi Territory, and for other purposes," was read the third time as amended; on the question, Shall this bill pass as amended? it was determined the affirmative—yeas 18, nays 8, as follows:

YEAS—Messrs. Adams, Anderson, Condit, Gilman, Goodrich, Gregg, Howland, Kitchel, Mathewson, Moore, Parker, Pope, Reed, Robinson, Smith of Maryland, Thruston, Tiffin, and White.

NAYS—Messrs. Bradley, Crawford, Maclay, Milledge, Smith of New York, Smith of Tennessee, Sumter and Turner.

Mr. SMITH, of Maryland, from the committee to whom was referred the bill, entitled "An act supplementary to the act, entitled 'An act laying an embargo on all ships and vessels in the ports and harbors of the United States,'" reported the bill with amendments; which were read for consideration.

On motion, by Mr. ADAMS, the minutes of the Committee of Inquiry, appointed the 27th November last, on the conduct of JOHN SMITH, a Senator from the State of Ohio, also, sundry papers relative to the inquiry, were read; and, on motion, by Mr. BRADLEY, it was agreed that the report of the committee be the order of the day for Thursday next.

WEDNESDAY, January 6.

The PRESIDENT communicated the report of the Postmaster General, in compliance with the 30th section of the act to establish the Post Office; also, his report, in obedience to the act of Congresss, passed on the 21st April, 1806, which were severally read for consideration.

The Senate took into consideration the amendments reported by the select committee to the bill, entitled "An act supplementary to the act, entitled 'An act laying an embargo on all ships and vessels in the ports and harbors of the United States;" and on motion, to agree to the following amendment to section 2, line 13, of the bill: after the word "cargo," insert, "and shall never thereafter be allowed a credit for duties on any goods, wares, or merchandise, imported by him or them, into any of the ports of the United States:" it was determined in the affirmative—yeas 25, nays 7, as follows:

YEAS—Messrs. Adams, Anderson, Bradley, Condit, Crawford, Gaillard, Gilman, Gregg, Howland, Kitchel, Maclay, Milledge, Mitchill, Moore, Parker, Pope, Reed, Robinson, Smith of Maryland, Smith of New York, Smith of Tennessee, Sumter, Thruston, Tiffin, and Turner.

NAYS—Messrs. Bayard, Goodrich, Hillhouse, Pickering, and White.

And the bill having been further amended, two additional amendments were proposed for consideration; and on motion the Senate adjourned.

THURSDAY, January 7.

WILLIAM B. GILES, from the State of Virginia, attended.

The Senate resumed, as in Committee of the Whole, the second reading of the bill, entitled "An act laying an embargo on all ships and vessels in the ports and harbors of the United States;" and the President reported the bill amended; and, further amendments having been agreed to, on the question, Shall this bill be read the third time as amended? it was determined in the affirmative.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to revive and continue in force for a further time the first section of the act, entitled 'An act further to protect the commerce and seamen of the United States against the Barbary Powers,'" in which they request the concurrence of the Senate.

The bill last brought up for concurrence was read, and ordered to the second reading.

CASE OF JOHN SMITH.

Conformably to the previous order of the Senate, the report of the select committee was read—Mr. SMITH being at this time in his seat.

Mr. ADAMS observed that on Monday a letter had been received from Mr. SMITH addressed to the Senate, which had been then read, and on which it was perhaps proper that some order should be taken before the report was acted upon. Several requests were made on which some determination ought to be previously had.

[Mr. ADAMS here read the letter.]

Mr. A. proceeded, by observing that the letter represented that all the evidence adduced by the committee, excepting the two bills of indictment, was either taken ex parte, or without allowing Mr. S. sufficient time to interrogate the witnesses; that it asked for the aid of counsel; for time; and for the means of adducing proof in his defence. It represented that a more summary procedure was recommended in the report. It admitted that there was no necessity of a legal conviction previous to the expulsion of a member of the Senate: but contended that proof of the facts charged must be first established in a legal way; and that the Senate could then only exercise this Constitutional right of expulsion.

Mr. A. observed that the letter contained two distinct requests; one to be heard by counsel, the other, to have an opportunity of a trial, under the same rules of evidence as prevail in judicial tribunals.

Mr. JOHN SMITH rose, and said he would submit the requests he had to make in the form of a motion; which he accordingly did in the following terms:

"That John Smith be informed specifically of the charges against him; that he be allowed to make a defence against such charges, and have process to compel the attendance of witnesses, and the privilege of being heard by counsel."

The VICE PRESIDENT inquired whether this motion were seconded. After pausing for a reply, he said he should, without a second, consider it as an application of Mr. SMITH to the Senate.

Mr. ANDERSON intimated an opinion that it would be best to consider the requests distinctly.

The VICE PRESIDENT having read the first request,

Mr. ADAMS said he had been looking for precedents that bore on this case. With regard to the first and second requests, he was of the opinion that it was neither consistent with the powers of the Senate, nor proper, to grant them. With regard to the third request, there was a precedent in favor of allowing counsel on one point, viz: to show cause why the report of the committee should not be adopted. [Mr. A. here cited the case of William Blount to this effect.] To the last request, therefore, he had no objection. To

the two other requests he had an objection. He considered it neither necessary nor proper that the specific charges should in such case be made out. The charges in this case were repeatedly stated in the report to be founded on the bills found by the grand jury. These, and the evidence on which they are sustained, had been communicated to Mr. SMITH.

As to the request to be entitled to the benefit of all the rules of evidence enforced in courts of law, and to compulsory process for the attendance of witnesses, Mr. ADAMS had great doubts whether such a power existed in the Senate. The compulsory process issued by a court was a subpœna to a judicial officer of the United States commanding the witnesses to attend in person. If this order was not obeyed, the court had power to issue an attachment to bring the witness into court by force: and the laws had provided that every such person should be compensated. He would ask, by what process, and under what penalties, the Senate could compel the attendance of witnesses. If they refused to attend, would it be said the Senate possessed the power of issuing an attachment for contempt.

Mr. SMITH complains that the proceedings against him have been ex parte. Mr. ADAMS said they might necessarily be so on the question of expulsion. If the member were tried as before a court, there must be a prosecutor. Who was in this case the prosecutor? There was none, unless they should appoint an Attorney General.

Another complaint, made by Mr. SMITH, was the taking depositions as evidence. But if we go by the rules of courts, not only these depositions, but the Message of the President, (containing the proceedings in the case of Burr) are mere waste paper. We must have all the witnesess here.

Another thing. It had been decided in the courts that the President was liable to process, and that he might be required to adduce papers. If this rule apply in this case, we can receive no communication from the President as testimony. We must issue our subpœna *duces tecum*, to bring him before us, and have him sworn. Mr. A. would ask gentlemen whether this was practicable or possible? He conceived not.

As to the reasoning in the report he should say no more about it. The letter and spirit of the Constitution, and every precedent that could be adduced, concurred to show that proceedings of this kind must be summary, and, consequently were not in the least analogous to the rules of courts.

Mr. SMITH had charged the committee with an error in citing the case of Blount in support of their opinion. But the report stated that Mr. Blount was called to give evidence relative to a letter with the writing of which he was charged. Was that such evidence as would be admitted in a court of justice?

The report also stated that in that case a comparison of hands had been admitted as evidence, which would not have been admissible in a court of law. A witness would be allowed there to express his belief that such were the handwriting of another; but there was a great difference between this and a comparison of hands. In the case of Algernon Sidney, the latter species of proof, it was true, had been admitted; and he had been convicted and executed; but it was known that the admission of this species of evidence had afterwards been the ground for a reversal of his attainder.

Mr. MITCHILL remarked that the authority under which the Senate were acting was given by the Constitution, which provides that "each House may, with the concurrence of two-thirds, expel a member." This was a broad power; and there was no particular form or course prescribed for its exercise. The request of Mr. S. is to have the proceedings here similar to those established in the judicial courts. Mr. M. said he did not conceive that the organization of the Senate admitted this. He certainly considered himself in a light very different from that of an accuser. It was sufficient for him, on this point, that if the gentleman wished a trial, he might have had it at Richmond, by giving his attendance there, instead of remaining at a distance. In this way he might have undergone a purgation by law on specific charges. Why he had not done this, he could himself best say.

Mr. M. viewed the power of expulsion as one which was to be exercised under a sound discretion and on the principles of honor and justice, and that the Senate, in discharging their duty, were bound by higher rules than the mere technical rules of law, by the great rule "to do unto others as you would others should do unto you." The organization of the Senate was such as to preclude it from sitting as a court of justice in such a case. Should it resolve itself into a judicial form, the trial of a member would be protracted to an endless length. He could have no idea of their getting through the case this session, and the member might in all probability continue to hold his seat until the expiration of the time of his appointment. For these reasons he believed that another course than that desired by the gentleman must be taken; one, which, although not conformable to the proceedings of a court of law, would be equally conformable to the principles of justice.

Mr. M. said, that with regard to the conduct of the principal in this conspiracy, there could be no hesitation in the mind of any man in believing that the design was to sever the Union, and to invade the territory of a foreign Power at peace with the United States, and that the circumstances of the acquittals at Richmond were such that the impression was very strong on the public mind that the individuals acquitted had not wrought an exoneration from suspicion. To these circumstances the committee in their report refer so far as relates to an alleged accomplice. And if there were an individual in the Senate who had participated in this conspiracy, it was a subject for the exercise of the sound discretion of the Senate, whether such a person should remain in it. For these reasons, Mr. M. said he was against complying with the two first requests of Mr. S.

With regard to the other, although he did not consider it absolutely incumbent on the Senate to grant it, in a case where the gentleman inculpated was present and possessed in himself the ample means of defence; yet when he made the request that he might be so indulged, he could not refuse granting it.

Mr. HILLHOUSE said he should not go into any consideration of the subject, in answer to the gentleman who had spoken, as to the nature of this case. He was not prepared for such an examination; nor had the Senate reached this stage of the business. He could only observe that in the case of Blount there was no such testimony admitted as in the present case. The fact was this: The committee appointed made a certain discovery of a letter alleged to be in the handwriting of Mr. Blount, which could be proved by two Senators present. The declarations of those Senators were not received as testimony; but a magistrate was sent for, and the two Senators were sworn; and there was no testimony received but what would have been legal testimony in a court of justice. They called on Mr. Blount to say whether the letter was in his handwriting; he declined answering; and the call was not enforced. What the gentleman from Massachusetts had read was merely the report of a committee.

Mr. H. said it appeared to him premature to go into this discussion at this time. A person was accused. The report in this case was sufficient ground for proceeding without an indictment.

In this respect, therefore, he did not think it necessary to do anything. The first point to be decided was, whether this person should have the aid of counsel. If so, it was proper that he should have it, as well with regard to the mode of conducting the trial, as on the trial itself. Such was the course pursued in the case of Blount. He would therefore move that John Smith, of Ohio, be heard by counsel, not exceeding two. After this, other questions as to time and testimony might arise; on all which the accused ought to be heard.

Mr. ADAMS did not believe the course recommended by the gentleman from Connecticut correct. It seemed to him extremely improper to bring in counsel to debate with the members of the Senate on every point that might be raised. If this course were adopted, the counsel would become a member of the Senate, and be entitled to make motions, which would be debated by him and the members. So far as the precedent in the case of Blount went—and however he might reject the gentleman from Connecticut, he must respect still more the information contained in the record of that case—he was willing to go. If this were a new case, he might be of a different opinion. He believed that in the country from which most of their precedents were derived, it was wholly unprecedented for counsel to be heard on a motion of expulsion. But he had no objection to the allowance of counsel to show why the report should not be adopted. But to place every member of the Senate in the same situation with counsel was highly improper, and yet this would infallibly follow should the ideas of the gentleman prevail. To obviate this difficulty he moved to add, "to show cause why the report of the committee should not be adopted"—which was the course pursued in the case of Blount.

Mr. HILLHOUSE wished to say one word on the difficulty started by the gentleman from Massachusetts, which, in his opinion, could never arise except from the imprudence of members. He presumed that every member would have such a regard to his character as not to enter into litigation with lawyers. The Senate would undoubtedly proceed with its usual solemnity; would hear the defence, and afterwards take the subject up by themselves in the same way as they did in the case of Blount; in which case the counsel were fully heard; after which the Senate took up the subject and debated it by themselves very largely.

Mr. BAYARD said he did not know that the amendment varied materially from the original motion, which, if adopted, would leave the whole question as open as under the original motion. For, if adopted, the counsel may come forward and show that the report ought not to be adopted, because the facts set forth in it were not legally proved, because time had not been allowed the accused to adduce testimony, and from other considerations. But he would take the liberty of telling the gentleman from Massachusetts that he had not taken the amendment which he had proposed from the record in the case of Blount. The resolution adopted in that case was the same as had been moved in this case by the gentleman from Connecticut; and that resolution having been adopted, the additional words—those words now moved as an amendment—were merely the act of the President of the Senate in addressing the counsel. The Journal says, "the President then said," &c.

Mr. B. said he considered the course pointed out by the gentleman from Connecticut correct. The only existing motion was to allow Mr. SMITH to be heard by counsel, to which there did not appear to be any objection. He should, indeed, think it strange if there were, as in justice and candor the Senate were bound to give him the same advantages that were allowed to any other person on his defence. It was a maxim of the best lawyers that no man ought to be counsel in his own case; for when we are agitated by those feelings which are unavoidably excited when our lives, our characters, or property, are at stake, we are seldom able to conduct our case with that coolness and perspicuity often essential to a favorable issue.

As this case too would form a precedent, it ought to be considered what a disparity of talent characterized even the members of the same body. The gentleman from Massachusetts, for instance, might be able to make a powerful defence, while other members, not possessed of the same intellectual attainments, or not accustomed to public speaking, might experience no inconsiderable embarrassment. Such, Mr. B. believed, was in some measure the situation of the present party, who was not a professional man, and not so exten-

sively in the habit of public speaking as other members of the Senate.

Mr. B. viewed it premature to decide what course should be taken by counsel. It would be prejudging the case to decide on these points before a hearing; it would be first to punish and then to listen to the defence. If, said he, the benefit of counsel is allowed, let us do it in a handsome, in a liberal manner, worthy the dignity and character of this body; and not in such a way as to exhibit the mere semblance and shadow of justice.

Mr. B. said he did not think it necessary to go into a detail on the request made by Mr. SMITH. As to being furnished with a specification of the charges against him, he thought nothing could be more reasonable. Was he to be suffered to wander in darkness? How could he be prepared for defence until he knew what the charges were? To furnish a specification of the charges preferred against an accused man was consonant to all the proceedings which he knew of, not only in this country, but in every country on earth where there existed a shadow of liberty. Were they to be told that the life of Mr. SMITH was not jeopardized; that even his property was not implicated. True. But he would appeal to the honorable feelings of the body, whether his interest in this decision might not be more valuable to him and his posterity than if he were to be sent to the scaffold and his property be confiscated. Its effect was to deprive him of his honest fame, which would be forever gone. Wherever such an interest existed, they were bound to protect the reputation of an individual by the same principles and rules which were provided by the benignant indulgence of the laws in cases where life and property was implicated. Mr. B. could not say that the charges ought to be specified with the minuteness of a special pleader. But they ought to be so specified that the accused could clearly comprehend and meet them. When, however, he referred to the resolution, he was ready to consider it as sufficiently explicit, and willing to rest this point on that ground.

The next question is, whether Mr. SMITH shall be allowed to make any defence, and if so, by what rules of evidence it, as well as the charges against him, shall be supported. I have read, said Mr. B., the report of the committee. It is certainly an eloquent report. I do not say that I approve all the principles it maintains, but I am willing to allow that it is drawn by the hand of a master. It has, however, one fault, and that is, that it does not bear on the point in question. On abstract principles it is very elaborate; but it leaves the mind, so far as relates to this case, as barren of information as it was before. I do not consider the question to be, whether there was a conspiracy of which Burr was the author. That such a conspiracy did exist I firmly believe; and I further believe that scarcely a man in the United States doubts it. Nor is it the question, whether the course pursued against Burr has been as discreet as it might have been, or whether certain alleged subtilities ought to have been discarded by the courts of law. The only question is, whether JOHN SMITH did participate in this conspiracy. If he did, even in the smallest criminal degree, I shall have no hesitation in giving my vote for his expulsion. But Mr. SMITH declares that he had no criminal participation in it. He says his doors may have been hospitably opened to Aaron Burr, and though appearances may to a certain degree be against him, he had no criminal intent—he contemplated no severance of the Union—he meditated no invasion of the territory of a nation in amity with the United States. Give him an opportunity, and he says he can explain everything alleged against him. I am not making the defence of JOHN SMITH, I am only contending that he ought to be heard. But what signifies hearing a man, if he be not given an opportunity of defence? What is the question? Merely a question of fact, whether he be guilty or innocent of this participation. Will you not allow him to be tried? How? By evidence. And what is the ordinary evidence in such cases? That of witnesses. Suppose he is accused on the testimony of a single individual? I demand, whether you will suffer your zeal to punish the offence, so far to transport you, as to lead you to punish without investigating the evidence? Would not this be a mockery of justice, to say you will hear the defence, and yet not investigate the credibility of testimony?

In reply to the remark of Mr. ADAMS, that this case was different from ordinary cases, inasmuch as there was no prosecutor or party, Mr. B. said that the committee was to be considered as taking a part in it.

But it was said that from the nature of the case it was necessary to be expeditious, and that the decision did not admit of delay. Mr. B. said this wore too much the semblance of that revolutionary spirit which had been so conspicuously displayed in another country. The only question was a mere question of fact; and instead of determining this on the established principles and rules of common law, gentlemen contend for our taking our own conceits and whims for evidence. If, said Mr. B., you will not take the ordinary rules of evidence, what rules will you take? Will it be said that mere hearsay shall be received; or ex parte depositions taken in a case not connected with that under consideration? I beg the House to consider the consequence of such procedure. Though such a decision may be fair in this case who will pretend to say what may not be the consequences of such a precedent? If such a principle is to prevail, what more will be necessary than to send to the woods, take the deposition of a man you know nothing about, and in which there may consequently be the vilest perjury, and receive this as proof, without giving the party accused an opportunity of defending himself? A more dangerous principle cannot be established.

As to the precedent relied upon, the gentleman from Connecticut has shown that the observations of the gentleman from Massachusetts are not correct.

[Mr. B. here read extracts from the Journals,

show that, what had been ascribed to the Senate, was only the act of a committee.]

Mr. B. said he was not, in these remarks, finding fault with the report of the committee, who were only to be considered in the light of a grand jury or inquisition, whose opinion was not final. In the case of Blount, the Senate, after a report of a select committee, had required the same strictness of evidence that is required in criminal cases. It was not possible in a civil or criminal case more strictly to prove a paper, than had been done in that instance.

There was, moreover, a strong distinction between the case of Blount and this case. In the first case there was but one point of fact; the letter being proved to be that of Mr. Blount everything was established. He denied it; when proved, stronger evidence could not be adduced.

How different is this case! There is no letter of Mr. SMITH that establishes his guilt. He is charged with participating with Col. Burr. How are points which go to establish this participation to be met but by witnesses from Ohio? With regard to one witness, Mr. B. said he was informed that Mr. S. believed himself able to disprove his allegations by other witnesses.

Mr. B. said, he would ask gentlemen to bring the case home to themselves. Suppose a deposition taken, several hundred miles off, criminating them, and that they had the means of proving it false by distant witnesses? Could anything be more injurious to them than to precipitate a trial, and prevent the party from meeting fairly and fully the accusation against him?

Mr. B. said, he had gone further than he had intended when he first rose. He had no other object in rising than to point out the course which he thought ought to be pursued. The present question simply was to allow counsel. He did hope and presume there would be no difficulty on this point. In his opinion, the Senate ought not to decide whether the party should have compulsory process for the attendance of witnesses until counsel were heard, although he perceived no defence which could be made by the party without such evidence. He concluded by expressing a hope, that, if if it should be found, that Mr. S. did participate in the conspiracy of Aaron Burr, they would all concur in the final vote they should give.

Mr. ADAMS said, he would not trespass on the time of the Senate by entering into the wide field the gentleman from Delaware had indulged in, when the only question was on the amendment. The gentleman had commenced his remarks by saying, that this amendment would make no alteration in the original motion. Well, if it made no alteration in it, was it necessary by a speech of an hour-and-a half to enter into such a wide discussion? In fact, Mr. A. said, he did not yet know, whether the gentleman intended to vote for the amendment or not. He had not informed them on this point. He had, it was true, told them the report related to any other than the subject before them. Might he not so far retort as to say that his speech related to anything but the subject before the Senate?

The remarks of the gentleman related to topics that might be very properly discussed before the final decision of the Senate. As to the admissibility of testimony, Mr. A. did not consider that point as precluded by the motion.

But there were some remarks offered by the gentleman, which Mr. A. could not hear and remain silent. The gentleman had observed, that he could not say there was, in this instance, no party, but that the committee was that party, that the committee was an inquisition.

Mr. BAYARD disclaimed any reference to a Spanish inquisition; he merely meant by "inquisition" a term equivalent to grand jury.

Mr. ADAMS said, he had no idea of being himself a party in this case. So considering it, he must view everything said on this point irrelevant. The gentleman asks, if we depart from the principles of a court of law, what principles we will follow? Whether we will follow our own conceits, and whims, or mere hearsay? No, sir, said Mr. A., I desire the Senate to take none of them. I wish them to take for their guide a sound discretion, what the Constitution requires and what every man's experience in private life teaches him the value of. It is as necessary here as anywhere else. Why take the rules of evidence as prescribed in a court of justice? Are there no other rules? I say those rules are most properly confined there; and the moment we issue from those halls we must take others. No man who has a sense of religion can take them without departing from his faith. Why are we bound by them any more than a man is in his private family? Suppose a man detects his servant in stealing, and tells his other servants to turn him out of his kitchen? Would he listen to the remonstrance, that he was acting unjustly, because the act was not proved in a court of law, according to the technical rules of evidence, and wait until it was so proved? I presume not. Well, if a man, in all the transactions of life, is not bound by those rules, why are we bound by them, when the Constitution gives us a discretion to act as we see fit? Discretion is neither whimsy nor caprice.

But when the gentleman proceeds and inquires whether we are to take *ex parte* depositions, that is another thing. Such depositions have been taken, not only against, but for, Mr. SMITH. Indeed, two-thirds of them are of the latter description. The nature of this species of testimony will be weighed, and we may safely trust to the reason and discretion of every Senator to give it its proper weight.

The gentleman says, as to the conspiracy of Burr, it is admitted, on all hands, there is no question. In so saying, the gentleman undertakes to answer for more than he (Mr. A.) would, as it is very probable, if counsel should be allowed, they would make this the first point. They will tell you that the conspiracy must be first proved by testimony admissible in a court of justice.

The gentleman contends for the ground of pre-

cedent in the case of Blount, and says that the depositions of the two Senators was the only evidence received in the Senate on that occasion. Did the gentleman, in a court of justice, ever hear a judge ask the accused if he wrote a letter containing matter against himself? If he has, it is a kind of court of justice, Mr. A. said, he had never heard of. This very question was put in the case of Blount. There was no answer. But was it not considered as evidence? If not, why was it asked?

Mr. A. said, he should not enter further into the subject. The gentleman, with great eloquence, had argued in favor of allowing counsel. To that no objection had been made. In support of this request, it had been said that a member may be accused who has not the faculty of public speaking. This, Mr. A. believed, was not the case with regard to the member implicated, but if it were, and counsel should not be allowed, he believed that, in the opinion of the Senate and of the world, he would not be destitute of counsel.

Mr. ANDERSON observed, in support of the amendment, that it specified the subject on which counsel were to be heard. Without such specification there would be no data for them to act on. Being a member of the committee that brought in the report, although the observations of the gentleman from Delaware were irrelevant to the question before them, Mr. A. said, he should take some notice of them. The gentleman said when he looked around him, he could not say there was no party——

[Mr. BAYARD explained, and disclaimed any insinuation that any member of the Senate was a party against Mr. SMITH. He only meant to say that the committee had an active agency in bringing forward the charges.]

Mr. ANDERSON then explained the manner in which the business originated at the instance of Mr. SMITH.

Mr. A. added that, when the whole subject came before the Senate, it would be found that the report was not founded on a single witness or deposition; and that the witnesses had been examined by Mr. SMITH. He had only thought it proper to say thus much at this time, as the other points introduced were altogether irrelevant.

Mr. HILLHOUSE said he had no objection to the amendment, as from the explanation of gentlemen it did not appear intended to exclude discussion on any preliminary questions that might be raised. Before he sat down, he wished to know whether the gentleman from Massachusetts, in his closing observation, referred to him? whether he meant to insinuate that he was acting as advocate or counsel for the individual accused? He did nothing but from a sense of impartial justice, and the duty he owed his country.

Mr. CRAWFORD saw no reason for restricting the number of counsel, and moved to strike out the restriction.

Mr. ANDERSON, viewing the allowance in the light of a favor, was for limiting the number of counsel.

Mr. GILES thought it would be best to limit the number of counsel. He wished, however, to ask whether Mr. S., while this business was pending, had a right to a vote as a Senator, as this circumstance might greatly influence his mind. The bodies from which they usually derived their precedents were only considered as bound, on a question of expulsion, by a sound discretion. Could the Senate lay their hands on a member while such a question was pending? If not, and the ideas avowed by gentlemen should prevail, a decision might be protracted to the full period of the member's time of service. And, if they could, the effect would go to deprive a State of half its representation. He made these remarks to show that this case was extremely different from those cases ordinarily brought before a court of justice.

Mr. G. said that the case of an impeachment was very different from that of expulsion, for which the Constitution had prescribed different modes of procedure. In the former they sat in a judicial character, while in the latter they appeared to act in their legislative capacity. From this it would seem that a very different course ought to be pursued in the two cases. A gentleman had inquired what security there could exist, if the procedure of courts of justice were violated? That, said Mr. G., arising from a sound discretion, which I believe as efficient as that which rests on the technical rules of law, and to guard which against abuse, the concurrence of two-thirds of the body is requisite.

Mr. G. said, he had one word to say as to the ideas of the gentleman from Delaware. He would show, by his own remarks, that he was guided by contradictory principles. He has observed that he is persuaded that all America is satisfied that Aaron Burr is guilty of a conspiracy. Did this conviction arise from the proceedings at Richmond? No. And yet he is of opinion that he is guilty; in which, I, said Mr. G., concur, It must be, therefore, on other principles than those of courts of justice. I conclude, therefore, that we must, under such circumstances, resort to different principles.

Mr. CRAWFORD withdrew his motion.

Mr. S. SMITH asked for the yeas and nays, lest, from the length of time taken up by the gentleman from Delaware, there might be some impression made on the public mind, that there existed an objection to the allowance of counsel.

Mr. BAYARD said, if the gentleman from Maryland had attended to his remarks, he would not have made this observation, as they had arisen naturally from the ideas expressed by the gentleman from Massachusetts. He was sensible of the embarrassment suggested by the gentleman from Virginia; he was, however, also sensible of the justice due to an accused member of the Senate; and, if they decided without evidence, they would condemn him unheard. To allow him counsel, without allowing him the means of defence, would be a mere mockery of justice; it would be to allow the form, and deny the substance. They had been told that the Senate ought to be governed by a wise discretion. To show the light in which

the discretion of a judge ought to be viewed, he would quote the words of Lord Camden.

[Here Mr. B. quoted the strong language of Lord C. on this point.]

Mr. BAYARD here recapitulated, and expanded several of the arguments previously insisted upon by him.

But, said Mr. B., I am told by the gentleman from Virginia that I have departed from my own rule in what I have admitted with regard to the conspiracy of Burr. I stated that I had no doubt of the conspiracy of Burr; and the gentleman asks on what ground I have embraced this conviction? I believe it on the same ground that I believe there is such a place as Kentucky, or Paris, without any deposition to that effect. But, I will go further. In the whole course of the defence of Mr. SMITH, this conspiracy is admitted. Why, therefore, should we, in this case, dispute its existence? In all controversies, whatever is not denied is considered admitted. The only real question, therefore, is, whether JOHN SMITH participated in this conspiracy? If the conspiracy is denied, I say it ought to be proved. I will put a case. Suppose a gentleman charged with participating in a conspiracy set on foot by Gen. Wilkinson? I mean not to insinuate that he has ever been concerned in one, but I have a right to put the case; not meaning to injure that gentleman by intimating the smallest belief in it, but merely putting the case, as such a charge has been made in the other House; suppose the individual charged, and brought on his trial, and he should aver that he did not participate in such a conspiracy, and declare that no such conspiracy existed? Am I to be told that, because this individual is charged with participating in it, it is to be taken for granted that it did exist? Suppose him charged with participating with a man I never heard of, may I not call for proofs of the conspiracy of that man? And have I not a right to call for facts, and demand witnesses? I do not, however, presume that the general conspiracy of Aaron Burr will be denied; for the acquittals at Richmond do not negative the charge of a conspiracy, as stated by the gentleman from Virginia.

The gentleman from Massachusetts has been called upon for an explanation, but he has not condescended to make an explanation. May I be permitted to repeat the request? Does the gentleman mean to insinuate that any member on the floor, from other than public considerations, would defend an accused man, or on grounds which he considered wrong? If the gentleman persists in refusing an explanation, I have a right to say, in this case, we want no attorney general; and, if there is none, that still a prosecutor would not be wanting.

The VICE PRESIDENT called the attention of the Senate to the real question under consideration, and intimated his expectation that gentlemen would confine themselves to it.

Mr. POPE presumed that, after this admonition from the Chair, it would be out of order to reply to the remarks of Mr. BAYARD, which he should otherwise have noticed.

The question was then taken on the resolution offered by Mr. HILLHOUSE, and amended at the instance of Mr. ADAMS, (in which amendment Mr. H. acquiesced,) and carried by a unanimous vote, as follows:

Messrs. Adams, Anderson, Bayard, Bradley, Condit, Crawford, Gaillard, Giles, Gilman, Goodrich, Gregg, Hillhouse, Howland, Kitchel, Maclay, Mathewson, Milledge, Mitchill, Moore, Parker, Pickering, Pope, Reed, Robinson, Smith of Maryland, Smith of New York, Smith of Tennessee, Sumter, Thruston, Tiffin, Turner and White.

FRIDAY, January 8.

The bill entitled "An act to revive and continue in force for a further time the first section of the act, entitled, 'An act further to protect the commerce and seamen of the United States against the Barbary Powers," was read the second time, and referred to Messrs. SMITH of Maryland, BRADLEY, and ADAMS, to consider and report thereon.

The following Message was received from the PRESIDENT OF THE UNITED STATES.

To the Senate and House of Representatives of the United States.

I communicate, for the information of Congress, the report of the Director of the Mint, of the operation of that establishment during the last year.

TH. JEFFERSON.

JANUARY 8, 1808.

The Message and report referred to were read; and ordered to lie for consideration.

Another Message was received from the PRESIDENT OF THE UNITED STATES, as follows:

To the Senate and House of Representatives of the United States:

I now render to Congress the account of the fund established for defraying the contingent expenses of Government for the year 1807. Of the sum of $18,012 50, which remained unexpended at the close of the year 1806, $8,731 11 have been placed in the hands of the Attorney General of the United States, to enable him to defray sundry expenses incident to the prosecution of Aaron Burr and his accomplices, for treasons and misdemeanors alleged to have been committed by them. And the unexpended balance, of $9,275 39, is now carried, according to law, to the credit of the surplus fund.

TH. JEFFERSON.

JANUARY 8, 1808.

The Message and papers therein referred to were read.

The Senate took into consideration, as in Committee of the Whole, the amendments reported to the bill, entitled "An act to incorporate the Trustees of the Baptist Church in the City of Washington;" and ordered that the further consideration thereof be postponed until the 25th of the present month.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to continue in force for a limited time an act, entitled 'An act continuing for a limited time the salaries of the officers of Government therein mentioned," in which they request the concurrence of the Senate.

The bill last brought up for concurrence was

read, and it was agreed, by unanimous consent, to dispense with the rule, and that this bill be now read the second time.

Ordered, That it be referred to Messrs. ANDERSON, GREGG, and ADAMS, to consider and report thereon.

The bill, entitled "An act supplementary to the act, entitled 'An act laying an embargo on all ships and vessels in the ports and harbors of the United States,'" was read the third time as amended; and the blank having been filled, the bill was passed with amendments.

SATURDAY, January 9.

Mr. CRAWFORD, from the committee to whom was referred the bill, entitled "An act supplementary to the act, entitled 'An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee,'" reported amendments; which were read for consideration.

MONDAY, January 11.

Mr. ADAMS submitted the following motion for consideration:

"*Resolved*, That a committee be appointed, with leave to report by bill or otherwise, and instructed to inquire at what period the present embargo can, consistently with the public interest, be removed; and whether, in what manner, and to what extent, upon its removal, the merchant vessels of the United States shall be permitted, in defence of their lawful commerce, to be armed against, and to resist, foreign aggression."

Mr. ANDERSON, from the committee to whom was referred the bill, entitled "An act to continue in force, for a limited time, an act, entitled 'An act continuing, for a limited time, the salaries of the officers of Government therein mentioned,'" reported the bill with amendments; which were read for consideration.

The Senate resumed, as in Committee of the Whole, the consideration of the amendments reported to the bill, entitled "An act supplementary to an act, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee;" and the PRESIDENT reported the bill amended.

Ordered, That it pass to the third reading as amended.

Mr. SMITH, of Maryland, from the committee to whom was referred the bill, entitled "An act to revive and continue in force, for a further time, the first section of an act, entitled 'An act further to protect the commerce and seamen of the United States against the Barbary Powers,'" reported the bill without amendment.

On motion, it was agreed to amend the bill, by expunging the words "and no longer," after the words "January next."

Ordered, That the bill pass to the third reading as amended.

TUESDAY, January 12.

A message from the House of Representatives informed the Senate that the House have passed an act, entitled "An act for the relief of Oliver Evans;" also, a bill, entitled "An act to provide for the payment of certain expenses incurred in the impeachment of Samuel Chase;" in which bills they request the concurrence of the Senate.

The two bills last brought up for concurrence were read, and ordered to the second reading.

On the request of Mr. SMITH, of Ohio, for a copy of the minutes of the committee appointed on the 27th of November last, to inquire into his conduct; and, also, a copy of all the correspondence between them and himself:

The following motion was made by Mr. CRAWFORD:

Ordered, That a copy of the minutes of the committee appointed on the 27th of November last, to inquire into the conduct of John Smith, of Ohio; also, a copy of the correspondence between the committee and the said Smith, be furnished to the said John Smith.

And on the question to agree to this motion, it was determined in the affirmative—yeas 17, nays 9 as follows:

YEAS—Messrs. Bayard, Crawford, Goodrich, Gregg, Hillhouse, Howland, Mathewson, Milledge, Mitchill, Pickering, Pope, Reed, Smith of New York, Sumter, Thruston, Turner, and White.

NAYS—Messrs. Anderson, Bradley, Condit, Giles, Gilman, Kitchel, Moore, Parker, and Smith of Tennessee.

WEDNESDAY, January 13.

Mr. FRANKLIN, from the State of North Carolina, attended.

The bill, entitled "An act for the relief of Oliver EVANS," was read the second time, and referred to Messrs. GREGG, GILES, and MITCHILL, to consider and report thereon.

The bill, entitled "An act to provide for the payment of certain expenses incurred in the impeachment of Samuel Chase," was read the second time, and referred to Messrs. MITCHILL, WHITE, and BRADLEY, to consider and report thereon.

Mr. TIFFIN stated, that, agreeably to the instructions of the Legislature of the State of Ohio, he submitted a resolution for consideration; which was read, and is as follows:

Resolved, That a committee be appointed to inquire into the expediency of authorizing a loan, for seven years, of seven thousand stand of arms, and twenty pieces of artillery, with carriages complete, to the State of Ohio; for the purpose of assisting to arm the militia of the said State, under such restrictions as the President may prescribe, as to their safe-keeping and re-delivery; and that they have leave to report by bill or otherwise.

The PRESIDENT communicated the report from the Secretary of the Treasury, in obedience to the resolution of the Senate of the 3d of March last; which was read for consideration.

The bill, entitled "An act to revive and continue in force, for a further time, the first section of the act, entitled 'An act further to protect the commerce and seamen of the United States against the Barbary Powers,'" was read the third time as amended.

Resolved, That this bill pass with amendments.

The bill, entitled "An act supplementary to an act, entitled 'An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee,'" was read the third time as amended.

Resolved, That this bill pass with amendments.

The Senate resumed, as in Committee of the Whole, the consideration of the amendments reported to the bill, entitled "An act to continue in force for a limited time an act, entitled 'An act continuing, for a limited time, the salaries of the officers of Government therein mentioned;" and the President reported the bill amended.

Ordered, That it pass to the third reading as amended.

CASE OF JOHN SMITH.

Agreeably to the order of the day, the Senate resumed the consideration of the report of the committee appointed the 27th of November last, to inquire into the conduct of JOHN SMITH, a Senator from the State of Ohio.

The PRESIDENT stated to Mr. SMITH, that he had now an opportunity to show cause why the report of the committee should not be adopted; and he was desired to name his counsel.

He accordingly informed the Senate that he had engaged Luther Martin and Francis S. Key, Esquires, as counsel; and on the motion of Mr. Bradley, Shall Mr. Key be admitted as counsel for Mr. Smith? it was determined in the affirmative; and on motion, Shall Mr. Martin be admitted as counsel for Mr. Smith? it was determined in the negative.

On request, by Mr. BAYARD, that Mr. SMITH inform the Senate whether, under present circumstances, he is ready to proceed—Mr. SMITH, by his counsel, offered his affidavit, together with the following application:

"John Smith, of Ohio, offers his affidavit to the honorable Senate, and requests a reasonable time to procure the testimony therein stated, and the proper means to enable him to produce it."

The affidavit was read as follows:

JOHN SMITH, of Ohio, makes oath on the Holy Evangelists of Almighty God that he can prove, by legal and competent testimony, the truth of the following facts, and that he can produce such proof before the honorable Senate of the United States, if allowed a reasonable time, and the usual means for that purpose.

He can prove that the testimony delivered against him before the grand jury at Richmond, is utterly destitute of credit—of one of those witnesses, Elias Glover, he can prove, that the general character is such as to render him unworthy of belief, that he has been guilty of acts of the greatest baseness, has been published as a liar, and is generally considered in the country where he resides and is known as a person destitute of truth; this he can prove by the testimony of the most respectable persons in Cincinnati, by Dr. Stall, John Sellman, Stephen McFarland, Judge Dunlavy and many others.

Of the other witness, Peter Taylor, the obscurity of his situation, as servant of Blannerhasset, his being a foreigner, and scarcely known in the country, may have prevented a sufficient developement of character, to ascertain, from that source, whether he is worthy of belief or not—but of his statement, as also of Glover's, he can prove the falsehood, by contradicting, by the most respectable witnesses, what he has alleged. And he fully expects to prove neither of these witnesses can be believed, in several material parts of their testimony, and that therefore they are unworthy of credit.

These contradictions relative to these witnesses, he can prove by Captain Gordon, Fielding Lowry, William McFarland, Colonel Chambers, General Gano, Mr. —— Longworth, and several others.

He also expects to prove that the conversation related by Colonel Taylor, was not correctly understood or accurately remembered by him. He believes that General Findley, (who is stated by Colonel Taylor to have been present,) will remember that they were the sentiments and arguments of a writer in a public paper which he was detailing, and that he expressed no wishes or ideas of his own on the subject. And that he will be enabled by this witness to disprove the fact of his entertaining erroneous opinions, if the Senate shall think such a charge requires to be disproved.

He further expects to prove that the orders drawn on him, by Aaron Burr, were not drawn in consequence of any participation in any of his projects; he can produce the strongest circumstantial evidence to account for and explain in the most satisfactory manner this transaction; he can show that neither in this nor in any other communication with Aaron Burr, did he act secretly or attempt any concealment; that he often mentioned the circumstance of Burr's having left this money with him—of his having written to him, and showed a copy of his letter, (which he took for the purpose,) and the answer thereto, and conversed freely and openly upon these subjects, shortly after they occurred, and long before they became circumstances of suspicion against him. This he can prove by Major Biggs, General Carbery, Jacob Burnett, General Findley, and several other characters of unquestioned respectability. He can also prove that his seeing Colonel Burr at Frankfort was merely accidental—that he was carried there by business, and had, during the short period of his stay there, no opportunity of confidential intercourse, had any cause or inclination for it existed. He can prove this by Mr. Hart, the president of the bank of Lexington, Alexander Parker, John Jordon, Dr. Chambers, James Chambers, and others.

He can also prove the nature and existence of the engagements which compelled him to leave home on the last of May, and occasioned his absence at the time the bills of indictment were found against him. That he had business requiring his presence in New Orleans; that he went thence to an estate which he holds in West Florida, and where he was then actually completing a settlement and laying out a town; and while in West Florida, received the newspaper announcing the finding of the bills of indictment against him. That he immediately prepared to surrender himself for trial, and that he did so, taking only those measures to prevent Governor Claiborne's executing his threat of sending him in irons to Richmond, which a desire of avoiding unmerited pain and mortification required and justified. These facts he can prove by A. D. Abrahams, Harris Hoe, John Murdoch, Ira C. Kneeland, David Bradford, Governor Williams, Benjamin Simmons, and many others.

He confidently expects that he can thus disprove and expose the testimony exhibited against him, and that he can thus explain satisfactorily these and all other circumstances which may have excited suspicions against him.

He also hopes and believes that he will be enabled to show the origin and progress of a scheme, from which all the accusations against him have proceeded. He expects to disclose a confederacy between the witness, Elias Glover, with others of his enemies, particularly with Matthew Nimmo, a man (if possible) more infamous than himself, and the base means which their malevolence suggested to injure him; that the identical deposition of Glover now produced against him, was the effect of this combination; that it was procured at the instigation of Nimmo, and forwarded by him, in a letter of accusation against him to the President of the United States, some time in February last, and that this Glover, in consequence of this his voluntary deposition, was (as he no doubt expected to be) subpœnaed to attend at Richmond, and indulged with an opportunity of gratifying his malice, and completing the purpose for which his calumny was intended.

He further states that it has been wholly and evidently out of his power to procure the testimony herein stated, so as to produce it at this moment. That he did not know till very recently what would be exhibited against him, and of course would be material and necessary for him to prove. That he expects and believes he can establish the truth of everything herein stated, if indulged with reasonable time and the means of enforcing the attendance of his witnesses.

On this 13th of January, 1808, the within named John Smith, made oath, that the facts herein stated are true, as stated, to the best of his knowledge and belief. Sworn to before me.

ALLEN B. DUCKETT.

The letter of the 4th of January, to the PRESIDENT, from Mr. SMITH, requesting to be heard by counsel, was again read.

On motion, by Mr. GILES,

Ordered, That the affidavit and application, together with the subsequent report of the committee appointed 27th of November last, to inquire into the conduct of JOHN SMITH, a Senator from the State of Ohio, be printed for the use of the Senate.

On motion, by Mr. GILMAN, it was agreed that the further consideration of the application of Mr. SMITH, made this day by his counsel, be postponed until to-morrow.

THURSDAY, January 14.

Mr. ADAMS moved that sundry amendments and notes of reference be entered upon the minutes of the proceedings of the committee appointed on the 27th of November last, to inquire into the conduct of JOHN SMITH, a Senator from the State of Ohio, as an alleged accomplice of Aaron Burr; which were read, and ordered to be entered accordingly.

Mr. GREGG reported, from the committee, that the amendments to the bill, entitled "An act to continue in force, for a limited time an act, entitled 'An act continuing, for a limited time, the salaries of the officers of Government therein mentioned," were correctly engrossed; the bill was then read the third time as amended, and passed.

Mr. GREGG, from the committee to whom was referred the bill, entitled "An act for the relief of Oliver Evans," reported it without amendment.

CASE OF JOHN SMITH.

Agreeably to the order of the day, the Senate resumed the consideration of the application of JOHN SMITH a Senator from the State of Ohio, filed yesterday, as follows: "JOHN SMITH, of Ohio, 'offers his affidavit to the honorable Senate, and 'requests a reasonable time to procure the testi-'mony therein stated, and the proper means to 'enable him to produce it."

Mr. ADAMS expressed his readiness to vote for any reasonable proposition which should designate the time and means, but declared himself unfriendly to such a general proposition as that before the Senate.

Mr. GILES expressed a coincidence of sentiment with Mr. ADAMS, and suggested the kind of resolution which he considered it proper for the Senate to adopt. While he was thus expressing himself, Mr. THRUSTON drew up a resolution, which Mr. GILES offered, and which, substantially, postponed the further consideration of the report to the —— day of ——, to allow Mr. SMITH time to adduce testimony.

Mr. BAYARD expressed similar ideas to those of Mr. GILES, but thought the object aimed at would be better effected by adopting a resolution of a different form. He said he had prepared two resolutions, one for allowing time, and the other prescribing the mode of obtaining testimony. He then read the first, substantially as follows:

"*Resolved*, That John Smith, of Ohio, having made affidavit to the materiality of witnesses now absent, by whom he states that he will be able to disprove the charges alleged against him, be allowed time until the —— day of —— next, to obtain any witnesses and to procure any evidence he may deem material to his defence."

Mr. ADAMS said he did not perceive any objection to this proposition. [In a subsequent period of the debate he declared that on a further consideration of it, he thought there were serious objections to it.]

Mr. GILES being inclined to think this proposition preferable to that offered by himself, withdrew the latter.

A long discussion then ensued, in which Messrs. BAYARD and HILLHOUSE supported; and Messrs. ANDERSON, MOORE, S. SMITH, GREGG, and CRAWFORD, opposed the foregoing resolution.

During the course of this discussion, it was moved to commit the resolution to a select committee. In the propriety of this course there was a general acquiescence. Mr. CRAWFORD read a resolution, conformable to his ideas of propriety, which, in substance, involved a postponement till the —— day of —— next, at which time the Senate would hear such witnesses as should appear for or against John Smith, whose testimony had a tendency to support or destroy the testimony of Elias Glover, Peter Taylor, and Colonel James Taylor.

The motion for commitment prevailed, and all the resolutions offered, together with the affidavit of Mr. Smith, were referred to a select committee, consisting of Messrs. ANDERSON, GILES, ADAMS, CRAWFORD, and BAYARD.

In this discussion all the speakers agreed in the propriety of allowing some time, the only question being as to the proper time. Mr. GREGG expressed himself in favor of allowing till the first of February, while Mr. BAYARD said he was not for allowing such a length of time as would preclude a definitive decision during the present session.

Strong objections were urged against precipitating a decision of such vast importance to the sitting member, and the injustice of deciding without allowing him a full hearing, was painted in vivid colors. In answer to this, the charge of the existence of a spirit of precipitation was denied, and it was said that Mr. S. ought, as soon as he heard of the bills found at Richmond, to have prepared himself for his defence; that he ought particularly to have taken these steps, as soon as the report was made on his expulsion; and that it was to be presumed that he had made every preparation he could. To this it was replied that the depositions he had brought with him could not from their nature have been intended as evidence on his trial, but merely intended to show the grounds of his defence, and to arrest the force of public opinion, that might otherwise have operated materially to his prejudice.

In animadverting on the time proper to be allowed, Mr. ANDERSON went into an examination of various parts of the testimony, to show that the acknowledgments of Mr. Smith tended forcibly to establish the truth of several of the charges, and particularly to confirm the testimony of E. Glover; and that there were several points of the testimony before the Senate which no further testimony could invalidate, and which consequently it was not incumbent on the Senate to allow Mr. S. the means of obtaining.

This suggestion was warmly repelled by Messrs. HILLHOUSE and BAYARD as incorrect, and they called upon the Senate to forbear from forming a definitive opinion until they had heard both sides of the question.

It was contended by some of the speakers that the resolution to be adopted by the Senate, ought to specify the points of defence, and to limit the witnesses summoned to such persons as could testify on them, and that the inconveniences against obtaining testimony by depositions was so great as to render that course altogether ineligible.

FRIDAY, January 15.

Mr. MITCHILL, from the committee to whom was referred the bill, entitled "An act to provide for the payment of certain expenses incurred in the impeachment of Samuel Chase," reported it without amendment.

Ordered, That this bill pass to a third reading.

Mr. WHITE, from the committee to whom was referred the subject, on the 5th of November last, reported a bill to extinguish the claims of the United States to certain balances, reported to be due from several of the States to the United States, by the Commissioners appointed to settle the accounts of the individual States with the United States; and the bill was read and ordered to the second reading.

SATURDAY, January 16.

Mr. ADAMS presented the memorial of Joseph Chase and Jared Gardner, of the island of Nantucket, agents to, and on behalf of, the owners of the ship Manilla and cargo, stating that the said ship is now lying in the harbor of Port au Prince, in the West Indies, loaded, and waiting the orders of her owners to return to some port in the United States; and praying that she, together with her cargo, may be exempted from the penalties of the laws on her return, for reasons stated at large in the memorial; which was read and referred to Messrs. ADAMS, GILMAN, and SMITH, of Maryland, to consider and report thereon.

The PRESIDENT communicated a report from the Secretary of the Treasury, with a statement, prepared in obedience to the provisions of the act, entitled "An act to regulate and fix the compensations of clerks, and to authorize the laying out certain public roads, and for other purposes;" and the report was read, and ordered to lie for consideration.

The bill to extinguish the claims of the United States to certain balances, reported to be due from several of the States to the United States, by the Commissioners appointed to settle the accounts of the individual States with the United States, was read the second time.

The Senate resumed, as in Committee of the Whole, the second reading of the bill, entitled "An act for the relief of Oliver Evans;" and the President reported the bill without amendment. The bill was then, by unanimous consent, read the third time, and passed.

The bill, entitled "An act to provide for the payment of certain expenses incurred in the impeachment of Samuel Chase," was read the third time, and passed.

On motion, by Mr. GILES,

Resolved, That so much of the Message of the President of the United States, communicated to Congress on the 27th day of October last, as relates to the defects in the penal laws of the United States, be referred to a committee, to examine and report, and that the committee have leave to report by bill or otherwise.

Ordered, That Messrs. GILES, ADAMS, BAYARD, ANDERSON, and CRAWFORD, be the committee.

Mr. ANDERSON from the committee to whom were referred several resolutions, which were offered to the consideration of the Senate, in the case of JOHN SMITH, Senator from the State of Ohio, reported the following resolution, which was read for consideration:

Resolved, That, on the first day of March next, the Senate will receive such testimony as John Smith, Senator from the State of Ohio, may then adduce in his defence, and that the Senate will then proceed to the final consideration of the report of the committee, appointed on the twenty-seventh day of November last, to inquire into his conduct as an alleged associate of

Aaron Burr; provided, in case Mr. Smith shall adduce evidence to discredit any witness whose testimony has been made use of against him, that he shall make it appear to the Senate that reasonable notice had been given to the witness, so intended to be discredited, of the time and place appointed for the taking of such evidence, and that he was served with a copy of this resolution.

MONDAY, January 18.

The PRESIDENT communicated the general account of the Treasurer of the United States, from October 1, 1806, to October 1, 1807; as, also, the accounts of the War and Navy Departments for the same period; together with the reports of the accounting officers of the Treasury thereon; which were read for consideration.

A message from the House of Representatives informed the Senate that the House do not agree to the amendments of the Senate to the bill, entitled "An act to continue in force, for a limited time, an act entitled 'An act continuing for a limited time the salaries of the officers of Government thereon mentioned."

The Senate took into consideration the resolution of the House of Representatives disagreeing to their amendments to the bill, entitled "An act to continue in force for a limited time an act, entitled 'An act continuing for a limited time the salaries of the officers of Government therein mentioned;" and receded from their amendments to the said bill.

The Senate resumed, as in Committee of the Whole, the second reading of the bill to extinguish the claims of the United States to certain balances reported to be due from several of the States to the United States, by the Commissioners appointed to settle the accounts of the individual States with the United States; and the President reported the bill to the House without amendment.

On the question, Shall this bill be engrossed and read a third time? it was determined in the affirmative.

CASE OF JOHN SMITH.

Mr. ANDERSON moved that the Senate proceed to the examination of Col. James Taylor, at their bar.

Mr. MACLAY, after some preliminary remarks to show the incorrectness of further delay, moved to postpone the motion, for the purpose of taking into consideration the report of the —— day of December.

A short conversation ensued on the course of procedure, in which it was remarked that, as Mr. SMITH had made some complaints relative to the examination of Colonel Taylor before the committee, and as he (Colonel Taylor) had been a long time absent from his family and was extremely anxious to return home, it was most advisable, before any further steps were taken, that he should be examined.

Mr. GILES rose to state to the Senate two circumstances which had been mentioned to him on the part of the accused. One was, that he (Mr. SMITH) had no objection to going on with the examination of Colonel Taylor as soon as his counsel came from the court-room, where he was now engaged, which he was advised would be in about half an hour; the other was, his wish to be excused by the Senate from voting on any question until a final decision on the question of expulsion.

The PRESIDENT said the Senate could make no such order.

Mr. BAYARD intimated that this would not be an inhibitory order of the Senate, but the mere allowance of the prayer of a member, who, on his own application, would be excused from voting, and that such an allowance was frequently made in individual cases.

Mr. GILES said that the gentleman from Delaware had exactly stated the grounds on which the application was made. It could not be viewed in the light of a prohibitory order, but as an order passed at the special instance of Mr. SMITH. Mr. G. observed that he had been induced to make this application because he thought it right in itself, and as it had been often done in particular cases. The present question was, whether, in this case, there was good reason for the request. For his own part, Mr. G. said, he perceived no objection to excusing Mr. SMITH from voting, although he should be averse to laying any prohibition upon him.

Mr. ADAMS said if the right of Mr. SMITH to vote centered in himself, he should have no objection to this application. But, by the application, it was required that not only he, JOHN SMITH, should not vote, but that the State of Ohio should lose one vote in that body until a final decision of the question of expulsion. It came, therefore, in a different shape, and assumed greater importance than a mere question respecting Mr. SMITH. As it respected Mr. SMITH individually, Mr. A. did not know why he had asked to be excused from voting on the questions that might come before the Senate. Had he ever been compelled, or even called upon to vote? Why, then, were the Senate called upon to say, by an act of theirs, that the State of Ohio should be deprived of a vote in the Senate until the final decision of this question? If Mr. SMITH himself chose not to vote, he was satisfied he would not be compelled to vote, and if he wished to vote, Mr. A. knew of no authority the Senate possessed to refuse him. Such a refusal would be a sacrifice of the rights of Ohio.

Mr. ANDERSON was against agreeing to this application, as its allowance would virtually go, by excusing Mr. SMITH from voting on all other questions, to admit him to vote on his own case. It was, moreover, going too far thus to deprive, by an act of the Senate, a State of one-half of its representation in that body. If Mr. SMITH did not vote, it ought to be his individual act, and not that of the Senate.

Mr. GILES said that, to save time, and to enable the Senate to deliberate further on this point before they decided upon it, he would withdraw the application for the present. He did not, however,

take this step because he perceived the force of the remarks offered by gentlemen, or that he had any reason to question the accuracy of the first suggestions of his own mind; but, to prevent any present embarrassment, and that the Senate might proceed in the examination of Colonel Taylor.

It was then determined, without a division, to proceed to the examination of Colonel Taylor at the bar of the Senate.

While the Senate were waiting for Mr. SMITH's counsel, Mr. ANDERSON moved that John Graham, Esq., be notified to attend at the bar of the Senate to give testimony in this case. Mr. A. remarked that the occasion of calling on Mr. Graham arose out of the testimony of Colonel Taylor, which he read.

The motion of Mr. ANDERSON was agreed to.

On motion of Mr. ANDERSON,

Resolved, That Colonel James Taylor be examined at the bar of the Senate, in the case of John Smith, a Senator of the State of Ohio; that the questions put to Colonel Taylor shall be reduced to writing and submitted to the President, who shall judge of the propriety of the question proposed.

After waiting a considerable length of time, Mr. F. S. Key, the counsel of Mr. SMITH, appeared, when Colonel James Taylor was sworn and examined at the bar of the Senate, the questions put to him being submitted in writing, conformably to the above order, and the answers received orally.

TUESDAY, January 19.

The PRESIDENT communicated the report of the Secretary of the Treasury, prepared in obedience to the directions of the act, entitled "An act regulating the currency of the foreign coins in the United States;" and the report was read for consideration.

CASE OF JOHN SMITH.

The Senate resumed the examination of the witnesses in the case of JOHN SMITH, a Senator the State of Ohio.

Mr. SMITH attended with his counsel.

James Taylor was again called, examined, and cross examined.

On motion, by Mr. ADAMS, Mr. Taylor was requested to file attested copies of extracts of certain letters written by him to the Secretary of State, and read this morning as part of his testimony.

John Graham was called, sworn, and examined.

James Taylor was again called and cross examined.

Mr. POPE submitted the following motion for consideration:

Resolved, That the Secretary of the Senate do issue a subpœna, in the usual form, to cause to be summoned to appear before the Senate, on the 1st Monday in March next, Elias Glover, then and there to give testimony in the case of John Smith, a Senator from the State of Ohio, regarding his alleged participation in the conspiracy of Aaron Burr.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act making appropriations for the support of Government during the year 1808," in which they request the concurrence of the Senate.

The bill last mentioned was read, and ordered to the second reading.

WEDNESDAY, January 20.

The bill, entitled "An act making appropriations for the support of Government during the year 1808," was read the second time, and referred to Messrs. SMITH of Maryland, BRADLEY, and ADAMS, to consider and report thereon.

CASE OF JOHN SMITH.

On motion, by Mr. ADAMS, Mr. TIFFIN, a Senator from the State of Ohio, was sworn as a witness in the case of JOHN SMITH, Senator from that State, examined and cross examined.

After the examination of Mr. TIFFIN, the following report of the select committee was taken into consideration:

Mr. Anderson, from the committee to whom was referred several resolutions, which were offered to the consideration of the Senate, in the case of John Smith, Senator from the State of Ohio, reported the following resolution:

Resolved, That on the first day of March next, the Senate will receive such testimony as John Smith, Senator from the State of Ohio, may then adduce in his defence, and that the Senate will then proceed to the final consideration of the report of the committee appointed, on the 27th of November last, to inquire into his conduct, as an alleged associate of Aaron Burr: *Provided*, in case Mr. Smith shall adduce evidence to discredit any witness, whose testimony has been made use of against him, that he shall make it appear to the Senate, that reasonable notice had been given to the witness so intended to be discredited, of the time and place appointed for the taking of such evidence, and that he was served with a copy of this resolution.

Mr. ROBINSON moved to strike out "the first day of March," for the purpose of inserting "on Monday the 25th instant."

Mr. ANDERSON suggested the propriety of dividing the question, and observed that it had been stated by Mr. SMITH that it would be the beginning of February before he could have the assistance of counsel in the room of Mr. MARTIN.

Mr. ROBINSON acquiesced in dividing the question.

Mr. BAYARD said he understood that it was the object of the motion to preclude Mr. SMITH from the opportunity of adducing additional evidence. The committee to whom the different resolutions were referred, in the report made by them, went on the principle that it was correct and obligatory on the Senate to hear any evidence Mr. SMITH could bring from the State of Ohio, the scene of the offences alleged against him. The first of March been fixed on as the result of a calculation, which had allowed two weeks to travel to Cincinnati, two weeks to collect evidence, and two weeks to return. It would be impossible, in a less period of time, to accomplish this object. If, therefore, the amendment were adopted, it must be on the prin-

ciple of denying to Mr. SMITH the opportunity of obtaining this evidence. To deny him such an opportunity, Mr. B. should view as equivalent to an absolute denial to hear him. For what, said he, is a hearing? Not the vain words of counsel unsupported by evidence. Mr. SMITH is charged by the allegation of certain facts. If, then, he is not heard in his defence through the medium of facts, he is substantially not heard at all. I will put the case, that, under present circumstances, grounds of suspicion exist that render him unworthy of a seat in this body. But how often has every man, conversant with criminal justice, on the hearing of ex parte evidence, decided one way, and afterwards on hearing both sides decided otherwise? I would ask gentlemen, what they would say of the judge or jury who, on hearing one side, should declare that the case was so plain that it would be a waste of time to hear the other? Is this procedure sanctioned by any court in this country, or in any part of the world? It is a mockery of justice to say to an individual accused, we will hear you, and yet preclude him from all possible means by which he can be fairly tried.

Mr. SMITH says he can adduce proof to show the existence of a conspiracy to destroy his character; unless, therefore, you allow him a reasonable time, you prejudicate his case. You refuse him the means of a defence.

Further, the committee viewed this, not merely as a decision on the personal application of Mr. SMITH, but as establishing an important precedent that would not be confined to this individual case. Let it also be observed that the charges in this case are generally founded on conversations—charges which, even if unfounded, are, from their peculiar nature, the most difficult to be repelled. Shall we, under all these circumstances, say we will hear Mr. S., and yet not listen to his defence? If we will not allow him a reasonable time, we may as well decide on his case at once; for to allow him counsel, without giving him materials for a defence, will be a burden instead of a benefit.

Mr. FRANKLIN, of North Carolina, spoke against the amendment He read the provision of the Constitution that authorizes the expulsion of a member, and then observed that a member might be expelled on various grounds, some of which, such as disorderly behaviour, might occur under the eye of the Senate, in which case it would be unnecessary to go abroad for testimony; but that the charges in this case were not of this nature. They had been preferred on testimony received from a distance; and all that Mr. SMITH asked was the indulgence in the same right of going abroad for evidence to confront that brought against him. And if, as he alleged, he could defend himself by this testimony, Mr. F. was of opinion that the first of March allowed him no more time than was reasonable.

Mr. ADAMS said he should not have risen, had not the gentleman from Delaware stated the motives of the committee in allowing Mr. SMITH until the first day of March to adduce additional testimony, and had he not stated that the committee considered this as not only correct in itself, but obligatory upon the Senate. I, said Mr. A., as a member of that committee, thought it not obligatory, though I assented to the resolution. I thought, and still think it a measure resting with the discretion of the Senate to adopt or refuse. Nor do I think, if this resolution shall not be adopted, that such a refusal could be considered as refusing a hearing. Notwithstanding, however, this opinion, I gave it my assent, and although circumstances have since occurred which render delay less necessary, I am still in favor of it.

[Mr. ADAMS here specified some of the prominent points of Colonel James Taylor's testimony before the Senate, as highly corroborative of his previous testimony before the committee. And as to the evidence of Peter Taylor, Mr. A. said it was strongly supported by a late article of the Richmond Enquirer, which he read.]

Mr. ADAMS observed that, under these circumstances, the probability that Mr. SMITH would be able to discredit the witnesses, who had testified against him, was very much weakened. He might go on, and say that the importance of discrediting Glover's testimony was also very much weakened by the evidence of Colonel Taylor at the bar of the Senate; for the gist of Mr. SMITH's affidavit was to show that the charges against him had arisen from a confederacy between Nimmo and Glover. Whatever the testimony of Nimmo and Glover was, it appeared, that it was not transmitted to the Executive until December, 1806; while, by the evidence of Colonel Taylor, it appeared that he had communicated grounds of suspicion totally separate from Nimmo and Glover, six weeks previously.

Mr. ADAMS concluded by observing that, notwithstanding these strong circumstances, he was not disposed to refuse the indulgence desired by Mr. SMITH; not because he believed he would not be heard without it, or that he had not already been allowed ample time to collect testimony, or that it was obligatory on the Senate to allow further time; but because he was willing to allow him every indulgence consistent with a shadow of reason.

The question was then taken by yeas and nays on striking out "the first of March," as follows:

YEAS—Messrs. Anderson, Condit, Gilman, Kitchel, Maclay, Mathewson, Moore, Parker, Robinson, and Smith of Tennessee—10.

NAYS—Messrs. Adams, Bayard, Crawford, Franklin, Gaillard, Giles, Goodrich, Gregg, Hillhouse, Howland, Milledge, Mitchill, Pickering, Pope, Reed, Smith of Maryland, Smith of New York, Sumter, Thruston, Turner, and White—21.

The yeas and nays were then taken on the original resolution, and are as follows:

YEAS—Messrs. Adams, Anderson, Bayard, Condit, Crawford, Franklin, Gaillard, Giles, Goodrich, Gregg, Hillhouse, Howland, Kitchel, Milledge, Mitchill, Pickering, Pope, Reed, Smith of Maryland, Smith of New York, Smith of Tennessee, Sumter, Thruston, Turner, and White—25.

NAYS—Messrs. Gilman, Maclay, Mathewson, Moore, Parker, and Robinson—6.

On motion of Mr. ADAMS, *Ordered*, That the Secretary of the Senate cause to be obtained, from the files of the Circuit Court for the Virginia district, a certified copy of the papers under the signature of the Querist, and a file of the Enquirer for the year 1807.

Mr. POPE called up for consideration the resolution, offered by him some days since, which, as amended at his instance, was read as follows:

Resolved, That the Secretary of the Senate do issue a *summons* [in the original resolution, subpœna] in the usual form, to cause to be summoned to appear before the Senate, on the first day in March next, Elias Glover and William McFarland, then and there to give testimony in the case of John Smith, a Senator from the State of Ohio, regarding his alleged participation in the conspiracy of Aaron Burr.

Mr. POPE said, if there was no opposition to its adoption, he should be averse to trespassing on the time of the Senate; but if there were objections to it, he should think it his duty to assign the reasons that induced him to offer it.

Mr. ADAMS said he certainly had some objections to its adoption. In the first place it imposed a duty on the Secretary which he would find it difficult, if not impracticable, for him to discharge. It required a subpœna to be issued in the "usual form." What form? Mr. A. questioned whether this would not be the first subpœna ever issued by him. If it were meant that it should be in the usual form prescribed in a court of law, Mr. A. doubted whether the power to issue it resided in the Senate. The process of a court was issued under law, and under a penalty attached to non-attendance. Should a witness refuse to attend, he was liable to further process to coerce his attendance; and the same law likewise provided that witnesses thus summoned should be compensated. Mr. A. said he knew of no such power inherent in the Senate. In cases of impeachment, it was true, certain processes had been issued in the nature of subpœnas; but actual subpœnas had never been issued. A summons had been issued, but not under any penalty for non-attendance, and certainly no process of attachment had ever been issued by the Senate to enforce the attendance of witnesses. Besides, if one witness is summoned, the Senate may be called upon to summon an hundred. And suppose the witnesses summoned shall not attend. Have you not, by summoning them, acknowledged their materiality? And might not their non-attendance be a ground for a continuance? Suppose a party, for the purpose of producing this effect, wishes a witness not to attend, and he summon him, and he does not attend, where will the delay end?

Further, the Constitution says no money shall be drawn from the Treasury but under an appropriation made by law, which requires the concurrence of the two Houses. What assurance have we that the other branch of the Legislature will authorize the compensation of witnesses? Have we not, in the case of an impeachment, been for two years in collision with the other House on the compensation of witnesses?

Mr. A. concluded by observing that he believed the course of proceedings in the Senate were such, that they must take such testimony as they could get, and rest satisfied with collecting it by the best means in their power.

Mr. POPE said, he was not a little surprised at the arguments adduced by the gentleman from Massachusetts. He did not care for the mere *words* of the proposition he had submitted, or whether the term "subpœna" was retained or stricken out. It was the principle only of the resolution which he regarded. Mr. P. said he must acknowledge that, on this subject, he was so unfortunate as to entertain ideas which were considered in the Senate as of a peculiar character, although sanctioned by the usage of ages. Having been recently translated from the bar to the Senate, he might perhaps have been mistaken in his opinion of the course most proper to be pursued on this occasion, and have considered the Senate as too much under the influence of rules of law. But he must say, that whatever errors might have tinged his first impressions, he still viewed the Senate as bound by the rules of equity and justice.

What was the object sought for in this case? To ascertain whether John SMITH is guilty of a certain criminal conduct. [Mr. P. here read the resolution offered by the select committee for expelling Mr. SMITH.] Is it not evident, then, said Mr. P., that we are now sitting to try and determine whether Mr. SMITH has been guilty of this criminal conduct? And ought we not, in so doing, to observe the rules best calculated to ascertain the truth? What, then, are the best means for attaining this end? Indisputably, by having the witnesses brought to our bar, who can furnish important information. I ask every member whether his mind will not be best satisfied by the presence of the witnesses, which will afford the fullest means of obtaining a correct statement of facts. Are not the benefits of the cross-examination of witnesses acknowledged by every man in the least conversant with courts of justice? And is not this invariably considered as the right of the accused? A right not derived from any rule of strict law, but from the principles of natural justice. I am equally surprised at the doubts expressed of our power to summon witnesses. If we have a right to inquire into the conduct of a Senator, we have necessarily a right to every incidental power essential to the making the inquiry. Where a power is given by the Constitution to do a particular thing, I have always deemed it a sound construction, that, by necessary implication, every incidental power is given which is necessary to carry the main power into full effect. But it is said that we have no fund out of which to compensate witnesses, and that the concurrence of the other House must be obtained before they can be indemnified. But are we, in the discharge of an important duty, involving the dearest interests of an individual, to act on the idea that the other House will not concur in providing for the expenses necessarily attendant upon it? The case of the impeachment of Chase has been instanced; and what is that case? In that case process was

issued for witnesses to ascertain certain facts; and I ask whether, previously to the issue of process, any law was passed making provision for defraying the expenses either attendant on their service, or for compensating the witnesses? This case therefore furnishes a strong argument against the conclusions of the gentleman from Massachusetts.

It may not be improper for me here to express my ideas of the powers of the Senate on the expulsion of its members. By the Constitution the Senate are empowered with the concurrence of two-thirds to expel a member. It follows that the Senate has, on this point, unlimited power, and, as incidental to its exercise, the power of receiving any kind of evidence that shall be satisfactory to them. In some cases they may expel a member for disorderly behaviour passing under their own view; they may, in other cases, expel on common fame; and in others, on account of his being found guilty of some particular, infamous crime; and some gentlemen seem to be of opinion, that a member may be expelled in consequence of having lost the confidence of his constituents. This resolution, however, is not bottomed on any of these circumstances, but on alleged particular criminal conduct. Is it not then proper to investigate whether Mr. S. has been guilty of this conduct or not? For recollect, when this body pronounces on the alleged charges, they pronounce to the nation that Mr. SMITH stands condemned of being guilty of treasonable conduct.

It may, perhaps, be contended, that after the indictments found against Mr. SMITH at Richmond, and after the rumor of his participation in the treasonable schemes against the peace of the Union, the Senate ought, on common fame, to expel him. I am, however, of opinion, that this is not the proper course, but that it is right to give him an opportunity of defending himself. One of the witnesses deemed material in this case is Mr. Glover. So far as we know anything of him he possesses a fair character. But his deposition has been taken *ex parte*. In Mr. SMITH'S answer, it appears that Mr. McFarland was present at the conversation alluded to in that deposition. As then the testimony of Glover is admitted to be important, is it not proper to obtain the best evidence the nature of the case admits of? I confess that, for one, I feel some difficulty in pronouncing a man guilty on *ex parte* evidence. Let us put the case home to ourselves. Suppose an individual should send a deposition from Kentucky charging me with an infamous crime. Would I not have reason to think the Senate guilty of injustice, should they not give me an opportunity of cross-examining the witness on whose evidence the charge was founded? But it is said the witnesses summoned may not attend. Well, if so, we shall have done everything in our power to obtain the best evidence, and we shall then be compelled to give the evidence we have the weight which its *ex parte* character deserves.

Again: it is said, if we summon Glover, Mr. SMITH may call upon us to summon a hundred witnesses in his defence. This, however, will altogether rest in the discretion of the Senate. While I contend for the propriety of summoning these two witnesses, let it not be understood that I am in favor of summoning witnesses to every collateral point. For while I deem it important to summon witnesses to establish the most important features of this case, I think depositions will answer as to the general character of the witnesses.

One other idea operates on my mind in favor of adopting this resolution. We have passed a resolution authorizing Mr. SMITH to take such depositions as he pleases to assail the character of Mr. Glover. If Mr. G. is anxious to defend his character, he will no doubt feel disposed to travel here at his own expense. But is it not just that his expenses should be defrayed; and will it not be a piece of oppression to him not to grant this process?

Before I sit down I will suggest one other idea with regard to the power of the Senate in this case. Suppose a question of expulsion to arise dependant on record evidence, and a summons should go to the clerk at Richmond to send certain records. How are we to pay the clerk the expense of getting attested copies of these records? Out of what fund is it to be drawn? Is it not clear that we must depend on the concurrence of the other House in defraying it. So, in the present case, we ought to take it for granted that the other House will do what is reasonable and just.

Mr. REED observed that Peter Taylor was a material witness in the present case, and he could see no reason for drawing a distinction between him and Glover and McFarland. All their characters were implicated. If one, therefore, was summoned, he thought they should all be summoned, and he should vote against the resolution unless Peter Taylor was likewise introduced into it.

Mr. POPE said, if the gentleman from Maryland wished the name of Peter Taylor introduced, he hoped that he would make a motion to that effect. He had no objection to summon him likewise.

Mr. GILES remarked that the suggestion of the gentleman from Maryland furnished a strong argument against the original resolution. If the Senate adopted the principle contained in that resolution, there would be no end of the exercise of the power of summoning witnesses. Suppose, after we have adopted this resolution, Mr. SMITH comes forward and says he has many material witnesses, and that he considers it extremely hard that they should come on at his expense. If the Senate regarded the obligation of consistency, would they not be obliged to summon these witnesses on the part of Mr. SMITH? With the gentleman from Kentucky, I foresee many inconveniences attending the present mode of procedure. But the question is, whether we are in a capacity to remedy them? I believe that we have already provided for the protection of witnesses in the resolution adopted, as far as we can. I am satisfied that all we can do in this case is to take vol-

untary testimony. The committee thought, that, under the peculiar circumstances of the case, if a witness were to be discredited, it would be proper to give him previous notice.

Mr. GILES said he was not ready at present to decide on the power of the Senate to summon a witness. But he would remark that, in a similar case, it had been thought necessary by the other House to have an express law passed. He alluded to the provision for summoning witnesses in the case of a contested election. For these and various other considerations, Mr. G. thought the course designated by the committee the best that could be pursued in this case.

Mr. POPE said that the inconveniences attending the course suggested by him could not be so great as gentlemen imagine. In ordinary criminal cases, the expenses of the accused were not paid by the public. So in this case, if Mr. SMITH brought forward his witnesses, the Senate would not be bound to defray their expenses.

The claim of Mr. SMITH, as well as that of every person accused before this body, to have his expenses reimbursed, must depend on our justice and sound discretion. If we have power to inquire into any fact not coming within our own view, we certainly ought to pursue that course of investigation that is best calculated to produce a correct result. Mr. P. added, that he had, as one of the committee, consented to propose a resolution for the expulsion of Mr. SMITH, but was desirous of having the witnesses named in the resolution examined at the bar of this House before a final decision. He therefore hoped that the resolution would be adopted, although, from the general opposition which had been discovered to this mode of procedure, he had but little reason to expect it.

Mr. FRANKLIN said a few words against the resolution, which was heard too indistinctly to report.

Mr. ANDERSON said that much pains had been taken to assimilate the powers of the Senate in the present case to those exercised in the case of an impeachment. In cases of impeachment, it would however be recollected, that it had invariably been found necessary to pass special rules, and among them one prescribing the form of a summons or subpœna. Nor did he believe that, in the present instance, they could adopt the resolution offered by the gentleman from Kentucky, without afterwards determining the form of the summons.

Under the proceedings of courts of justice particular writs were provided for particular cases. But this was not the case in the Senate. No rule was prescribed for the Secretary. If he then was not competent to fixing the form, was the President? No. As his power was altogether derivative, the Senate alone was competent.

But, Mr. A. said, he denied that the Senate in this case had any such power; for he could not consider them, in such a case, as acting in a judicial capacity. The Constitution says: "Each 'House shall be the judge of the elections, returns, and qualifications of its own members; 'and a majority of each shall constitute a quorum 'to do business; but a smaller number may adjourn from day to day, and may be authorized 'to compel the attendance of absent members, in 'such manner and under such penalties as each 'House may provide." In this case they are vested with judicial powers so far as relates to enforcing the attendance of members. But what is the next clause? "Each House may determine the 'rules of its proceedings, punish its members for 'disorderly behaviour, and, with the concurrence 'of two-thirds, expel a member."

If in this case the Constitution meant to confer a judicial power to summon witnesses, it would have said so.

The question was then taken by yeas and nays on the resolution, which was disagreed to, as follows:

YEAS—Messrs. Bayard, Goodrich, Hillhouse, Pickering, Pope, Smith of Maryland, and White—7.

NAYS—Messrs. Adams, Anderson, Bradley, Condit, Crawford, Franklin, Gaillard, Giles, Gilman, Gregg, Howland, Kitchel, Maclay, Mathewson, Milledge, Mitchill, Parker, Reed, Robinson, Smith of New York, Smith of Tennessee, Sumter, and Turner—23.

THURSDAY, January 21.

The Senate resumed the motion, made on the 11th instant,

"That a committee be appointed, with leave to report by bill or otherwise, and instructed to inquire at what period the present embargo can, consistently with the public interest, be removed; and whether, in what manner, and to what extent, upon its removal, the merchant vessels of the United States shall be permitted, in defence of their lawful commerce, to be armed against and to resist foreign aggressions;"

And on the question to agree to this motion, it was determined in the negative.

Ordered, That the bill, entitled "An act authorizing the erection of a bridge over the river Potomac, within the District of Columbia," be the order of the day for to-morrow.

The bill to extinguish the claims of the United States to certain balances reported to be due from several of the States to the United States, by the Commissioners appointed to settle the accounts of the individual States with the United States, was taken up for a third reading.

On motion, by Mr. ADAMS, to postpone the further consideration of this bill to the first Monday in December next, it was determined in the affirmative—yeas 17, nays 16, as follows:

YEAS—Messrs. Adams, Condit, Crawford, Gaillard, Giles, Gilman, Howland, Kitchel, Mathewson, Milledge, Moore, Parker, Pickering, Robinson, Smith of Tennessee, Sumter, and Thruston.

NAYS—Messrs. Anderson, Bayard, Bradley, Franklin, Goodrich, Gregg, Hillhouse, Maclay, Mitchell, Pope, Reed, Smith of Maryland, Smith of New York, Tiffin, Turner, and White.

FRIDAY, January 22.

The Senate resumed the third reading of the bill, entitled "An act authorizing the erection of a

bridge over the river Potomac, in the District of Columbia;" and on the question, Shall this bill pass as amended? it was determined in the affirmative—yeas 18, nays 14, as follows:

YEAS—Messrs. Bayard, Bradley, Condit, Crawford, Franklin, Gaillard, Gilman, Goodrich, Howland, Kitchel, Mathewson, Milledge, Moore, Pope, Robinson, Smith of Tennessee, Turner, and White.

NAYS—Messrs. Adams, Anderson, Giles, Gregg, Hillhouse, Maclay, Mitchill, Parker, Pickering, Reed, Smith of Maryland, Smith of New York, Sumter, and Thruston.

SATURDAY, January 23.

The Senate assembled, and a quorum not attending, adjourned.

MONDAY, January 25.

Mr. TIFFIN called up the motion made on the 5th of November last, for an amendment to the Constitution of the United States.

Ordered, That this motion be referred to Messrs. TIFFIN, ROBINSON, GILES, ADAMS, and ANDERSON, to consider and report thereon.

Mr. ROBINSON submitted the instructions of the Legislature of the State of Vermont, to the Senators in Congress, on this subject; which were read, and referred to the same committee.

Mr. SMITH of Maryland, from the committee to whom was referred, on the 20th instant, the bill, entitled "An act making appropriations for the support of Government during the year 1808," reported the bill with amendment.

The PRESIDENT communicated the report of the Secretary of War, made in compliance with the fifth section of the "Act to regulate and fix the compensation of clerks, and to authorize the laying out of certain public roads, and for other purposes;" which was read, and ordered to lie for consideration.

Agreeably to the order of the day, the Senate resumed the consideration of the amendments reported by the committee to the bill, entitled "An act to incorporate the Trustees of the Baptist Church, in the city of Washington."

Ordered, That the further consideration of this bill be postponed until to-morrow.

The PRESIDENT communicated a letter from James Taylor, requesting compensation as a witness in the case of John Smith of Ohio: which was read, and referred to Messrs. ADAMS, ANDERSON, and TIFFIN, to consider and report thereon.

TUESDAY, January 26.

Ordered, That the amendments to the bill, entitled "An act to incorporate the Trustees of the Baptist Church in the city of Washington," be postponed until to-morrow.

The Senate resumed, as in Committee of the Whole, the amendment reported by the select committee, to the bill, entitled "An act making appropriations for the support of Government during the year 1808," which was agreed to, and a further amendment was proposed.

Ordered, That the further consideration of this bill be postponed until to-morrow.

Mr. REED, from the committee to whom was referred, on the 28th of December last, the petition of Bartholomew Berry, a wounded soldier in the Revolutionary war, asked and obtained leave to bring in a bill to revive and continue in force the 19th section of an act, entitled "An act to ascertain and fix the Military Establishment of the United States," and to extend the provisions thereof. And the bill was read, and ordered to the second reading.

WEDNESDAY, January 27.

The bill to revive and continue in force the 19th section of an act, entitled "An act to ascertain and fix the Military Establishment of the United States," and to extend the provisions thereof, was read a second time. On the question, Shall this bill be engrossed and read the third time? it was determined in the affirmative.

Mr. ADAMS, from the committee to whom was referred, on the 25th instant, the letter of James Taylor, asked and obtained leave to bring in a bill to provide for the payment of certain expenses incurred in the inquiry into the conduct of JOHN SMITH, a Senator from the State of Ohio; which was read, and ordered to the second reading.

Mr. ADAMS gave notice, that he should to-morrow ask leave to bring in a bill to revive and continue certain causes and proceedings in the district court of the District of Columbia.

The Senate resumed, as in Committee of the Whole, the amendments reported by the select Committee to the bill, entitled "An act making appropriations for the support of Government during the year 1808;" and the President reported it to the House amended.

Ordered, That this bill pass to the third reading as amended.

The Senate resumed, as in Committee of the Whole, the amendments reported by the select committee to the bill, entitled "An act to incorporate the Trustees of the Baptist Church in the city of Washington."

Ordered, That the bill, together with the said amendments, be recommitted to Messrs. MILLEDGE, ROBINSON, and MACLAY, further to consider and report thereon.

THURSDAY, January 28.

A Message from the House of Representatives announced to the Senate the death of EZRA DARBY, Esq., a representative from the State of New Jersey, and that his remains will be interred to-morrow, at 12 o'clock.

On motion, by Mr. CONDIT,

Resolved, That the Senate will attend the funeral of EZRA DARBY, Esq., late a member of the House of Representatives, to-morrow, at 12 o'clock.

The bill to provide for the payment of certain expenses incurred in the inquiry into the conduct of JOHN SMITH, a Senator from the State of Ohio, was read the second time; and, on the question,

Shall this bill be engrossed and read the third time? it was determined in the affirmative.

Agreeably to notice given yesterday, Mr. ADAMS asked and obtained leave to bring in a bill to revive and continue certain causes and proceedings in the district court of the District of Columbia; and the bill was read, and ordered to the second reading.

The bill to revive and continue in force the nineteenth section of an act, entitled "An act to ascertain and fix the Military Establishment of the United States, and to extend the provisions thereof," was read the third time and passed.

The bill, entitled "An act making appropriations for the support of Government, during the year 1808," was read the third time as amended.

Resolved, That this bill pass as amended.

FRIDAY, January 29.

The Senate went into the consideration of Executive business, and then adjourned.

MONDAY, February 1.

The bill to revive and continue certain causes and proceedings in the district court of the District of Columbia was read the second time. On the question, Shall this bill be engrossed and read the third time? it was determined in the affirmative.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate of the United States:

The Senate having advised and consented to the ratification of the treaty with the Ottaways, Chippeways, Wyandots, and Pottawatomies, concluded at Detroit, on the 17th day of November last; and, also, to the treaty concluded with the Choctaws at Pooshapukanuck, on the 16th of November, 1805, I now lay them before both Houses of Congress for the exercise of their Constitutional powers as to the means of fulfilling them.

TH. JEFFERSON.

JANUARY 30, 1808.

The Message was read, and ordered to lie for consideration.

The bill to provide for the payment of certain expenses incurred in the inquiry into the conduct of JOHN SMITH, a Senator from the State of Ohio, was read the third time and passed.

CLAIM OF THOMAS PAINE.

The PRESIDENT communicated an address, signed Thomas Paine, stating his claim on the United States for services rendered during the Revolutionary war, and his title to remuneration. The address was read, and is as follows:

NEW YORK, *January* 21, 1808.

To the honorable the Senate of the United States:

The purport of this address is to state a claim I feel myself entitled to make on the United States, leaving it to their Representatives in Congress to decide on its worth and its merits. The case is as follows:

Towards the latter end of the year 1780, the Continental money had become so depreciated (a paper dollar not being more than a cent) that it seemed next to impossible to continue the war.

As the United States were then in alliance with France, it became necessary to make France acquainted with our real situation. I therefore drew up a letter to Count de Vergennes, stating undisguisedly the true case, and concluding with the request whether France could not, either as a subsidy or a loan, supply the United States with a million sterling, and continue that supply, annually, during the war.

I showed the letter to Mr. Marbois, Secretary to the French Minister. His remark upon it was, that a million sent out of the nation exhausted it more than ten millions spent in it. I then showed it to Mr. Ralph Izard, member of Congress from South Carolina. He borrowed the letter of me, and said, "We will endeavor to do something about it in Congress."

Accordingly, Congress appointed Colonel John Laurens, then aid to General Washington, to go to France and make a representation of our situation, for the purpose of obtaining assistance. Colonel Laurens wished to decline the mission, and that Congress would appoint Colonel Hamilton; which Congress did not choose to do.

Colonel Laurens then came to state the case to me. He said he was enough acquainted with the military difficulties of the Army, but that he was not enough acquainted with political affairs, nor with the resources of the country, to undertake the mission; "but, said he, "if you will go with me, I will accept it;" which I agreed to do, and did do.

We sailed from Boston in the Alliance frigate, Captain Barry, the beginning of February, 1781, and arrived at L'Orient the beginning of March.

The aid obtained from France was six millions of livres as a present, and ten millions as a loan, borrowed in Holland, on the security of France.

We sailed from Brest in the French Resoulue frigate the first of June, and arrived at Boston on the 25th of August, bringing with us two millions and a half of livres, in silver, and convoying a ship and a brig laden with clothing and military stores. The money was transported with sixteen ox teams to the National Bank at Philadelphia, which enabled the army to move to Yorktown to attack, in conjunction with the French army under Rochambeau, the British army under Cornwallis. As I never had a cent for this service, I feel myself entitled, as the country is now in a state of prosperity, to state the case to Congress.

As to my political works, beginning with the pamphlet *Common Sense*, published the beginning of January, 1776, which awakened America to a declaration of independence, as the President and Vice President both know, as they were works done from principle, I cannot dishonor that principle by asking any reward for them. The country has been benefited by them, and I make myself happy in the knowledge of it. It is, however, proper for me to add, that the mere independence of America, were it to have been followed by a system of government modelled after the corrupt system of the English Government, it would not have interested me with the unabated ardor it did. It was to bring forward and establish the representative system of government, as the work itself will show, that was the leading principle with me in writing that work, and all my other works, during the progress of the Revolution. And I followed the same principle in writing the *Rights of Man*, in England.

There is a resolve of the old Congress, while they sat at New York, of a grant of three thousand dollars to me. The resolve is put in handsome language, but it has relation to a matter which it does not express. El-

bridge Gerry was chairman of the committee who brought in the resolve. If Congress should think proper to refer this memorial to a committee, I will inform that committee of the particulars of it.

I have also to state to Congress, that the authority of the old Congress was become so reduced towards the latter end of the war, as to be unable to hold the States together. Congress could do no more than recommend, of which the States frequently took no notice; and when they did, it was never uniformly.

After the failure of the five-per-cent. duty, recommended by Congress, to pay the interest of a loan to be borrowed in Holland, I wrote to Chancellor Livingston, then Minister for Foreign Affairs, and Robert Morris, Minister of Finance, and proposed a method for getting over the whole difficulty at once; which was, by adding a Continental Legislature to Congress, who should be empowered to make laws for the Union, instead of recommending them; so the method proposed met with their full approbation. I held myself in reserve, to take the subject up whenever a direct occasion occurred.

In a conversation afterwards with Governor Clinton, of New York, now Vice President, it was judged that, for the purpose of my going fully into the subject, and to prevent any misconstruction of my motive or object, it would be best that I received nothing from Congress, but leave it to the States, individually, to make me what acknowledgment they pleased.

The State of New York made me a present of a farm, which, since my return to America, I have found it necessary to sell; and the State of Pennsylvania voted me five hundred pounds, their currency. But none of the States to the east of New York, or the south of Philadelphia, ever made me the least acknowledgment. They had received benefits from me, which they accepted, and there the matter ended. This story will not tell well in history. All the civilized world know I have been of great service to the United States, and have generously given away talent that would have made me a fortune.

I much question if an instance is to be found in ancient or modern times of a man who had no personal interest in the cause he took up,—that of independence and the establishment of a representative system of government, and who sought neither place nor office after it was established—that persevered in the same undeviating principles as I have done, for more than thirty years, and that in spite of difficulties, dangers, and inconveniences, of which I have had my share.

THOMAS PAINE.

TUESDAY, February 2.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to erect a light-house on Point Judith, in the State of Rhode Island;" also, a bill, entitled "An act making appropriations for the support of the Navy of the United States during the year 1808;" in which bills they request the concurrence of the Senate. And that the House of Representatives disagree to the amendment of the Senate to the bill, entitled "An act making appropriations for the support of Government during the year 1808."

The two bills last brought up for concurrence were read, and ordered to the second reading.

The bill to revive and continue certain causes and proceedings in the district court of the District of Columbia was read the third time and passed.

WEDNESDAY, February 3.

The bill, entitled "An act to erect a light-house on Point Judith, in the State of Rhode Island," was read the second time, and referred to Messrs. MATHEWSON, GILMAN, and ADAMS, to consider and report thereon.

The bill, entitled "An act making appropriations for the support of the Navy of the United States during the year 1808" was read the second time, and referred to Messrs. SMITH of Maryland, ADAMS, and SUMTER, to consider and report thereon.

The PRESIDENT communicated an application, signed B. Henry Latrobe, respecting the avenue to the gallery of the Senate Chamber; which was read, and referred to Messrs. MITCHILL, ADAMS, and PICKERING, to consider and report thereon.

On motion by Mr. ADAMS,

Resolved, That the report of the Secretary of the Treasury, on the subject of drawbacks on exportation, made on the 13th of January, pursuant to a resolution of the Senate of the 3d of March last, be referred to a special committee, with leave to report by bill or otherwise.

Ordered, That Messrs. ADAMS, BRADLEY, and GILMAN, be the committee.

The Senate proceeded to consider the resolution of the House of Representatives disagreeing to their amendment to the bill, entitled "An act making appropriations for the support of Government during the year 1808." Whereupon,

Resolved, That they recede from their said amendment.

On motion, by Mr. ANDERSON:

Resolved, That a committee be appointed to take into consideration the claims of sundry persons, which claims have been derived under the State of North Carolina, to certain lands lying within the State of Tennessee, and within the Congressional reservation south and west of a line described in the first section of an act, entitled "An act to authorize the State of Tennessee to issue grants and perfect titles to certain lands therein described, and to settle the claims to the vacant and unappropriated lands within the same;" and that the committee have leave to report by bill or otherwise.

Ordered, That Messrs. ANDERSON, BRADLEY, and ADAMS, be the committee.

THURSDAY, February 4.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

Having received an official communication of certain orders of the British Government against the maritime rights of neutrals, bearing date the 11th of November, 1807, I transmit them to Congress, as a further proof of the increasing dangers to our navigation and commerce, which led to the provident measure of the act of the present session, laying an embargo on our own vessels.

TH. JEFFERSON.

FEBRUARY 2, 1808.

The Message and papers accompanying it were read, and referred to Messrs. SMITH, of Maryland, ADAMS, ANDERSON, BRADLEY, and GREGG, the committee to whom were referred, on the 18th of December last, the Message and communications from the President of the United States, of that date, to consider and report thereon.

FRIDAY, February 5.

Mr. MITCHILL presented the several petitions of Isaac Clason and James Creighton, merchants, of the city of New York, stating that, through unavoidable casualties, they were deprived of the benefit of drawback on certain goods exported according to law, and praying relief; and the petitions were read and severally referred to the committee appointed on the 3d instant, on the report of the Secretary of the Treasury of the 13th of January last, to consider and report thereon.

Mr. SMITH, of Maryland, from the committee to whom was referred, on the 3d instant, the bill entitled "An act making appropriations for the support of the Navy of the United States during the year 1808," reported the bill without amendment.

Ordered, That this bill pass to a third reading.

The PRESIDENT communicated the report of the Commissioners of the Sinking Fund, stating the measures which have been authorized by the Board, subsequent to their report of the 5th of February, 1808, so far as the same have been completed, are fully detailed in the report of the Secretary of the Treasury to this Board, dated the fourth day of the present month, and in the statements therein referred to, which are therewith transmitted, and prayed to be received as part of their report.

And the report was read and ordered to lie for consideration.

Mr. MITCHILL, from the committee to whom was referred, on the 3d instant, the letter of B. Henry Latrobe, respecting the avenue to the gallery of the Senate Chamber, reported that it is not expedient for the Senate to make any order thereon; and the report was adopted.

Mr. GILES, from the committee to whom was referred, on the 16th January, so much of the Message of the President of the United States, communicated to Congress on the 27th of October last, as relates to the defects in the penal laws of the United States, with leave to report by bill or otherwise, reported in part a bill for the punishment of treason and other crimes and offences against the United States; and the bill was read and ordered to the second reading.

Mr. MATHEWSON, from the committee to whom was referred, on the 3d instant, the bill, entitled "An act to erect a light-house on Point Judith, in the State of Rhode Island," reported the bill without amendment.

Ordered, That this bill pass to a third reading.

Mr. MITCHILL presented the memorial and petition of Daniel Ludlow and others, purchasers, at different times and prices, of large tracts of land, within the limits of the lands granted by the State of Georgia to sundry companies, lying in the waters of the Tennessee, Tombigbee, and Mississippi rivers, praying that provision may be made by law, to enable them to bring their claims before the Supreme Court of the United States, in order that a definitive judgment may be obtained thereon, or that an equitable compensation be made to them by agreement, arbitration, or otherwise; and, on the question, Shall the memorial be read? it was determined in the affirmative—yeas 22, nays 3, as follows:

YEAS—Messrs. Adams, Anderson, Bayard, Bradley, Condit, Gaillard, Gilman, Goodrich, Gregg, Hillhouse, Howland, Kitchel, Mitchill, Parker, Pickering, Pope, Reed, Robinson, Smith of Maryland, Smith of Tennessee, Sumter, and Tiffin.

NAYS—Messrs. Crawford, Milledge, and Moore.

The memorial was accordingly read.

MONDAY, February 8.

The bill for the punishment of treason, and other crimes and offences against the United States, was read the second time. On motion, it was agreed that this bill be the order of the day for Thursday next.

Mr. GREGG presented the petition of General Arthur St. Clair, stating that he had advanced money for the recruiting service during the Revolutionary war, and praying reimbursement; and the petition was read and referred to Messrs. GREGG, BRADLEY, and SUMTER, to consider and report thereon.

The bill, entitled "An act making appropriations for the support of the Navy of the United States during the year 1808," was read the third time and passed.

The bill, entitled "An act to erect a light-house on Point Judith, in the State of Rhode Island," was read the third time and passed.

TUESDAY, February 9.

Mr. MILLEDGE gave notice, that he would tomorrow ask leave to bring in a bill for erecting a light-house on the south point of the island of Sapelo, in the State of Georgia.

WEDNESDAY, February 10.

Agreeably to notice given yesterday, Mr. MILLEDGE asked and obtained leave to bring in a bill for erecting a light-house and placing buoys at the places therein mentioned; and the bill was read, and ordered to the second reading.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of
Representatives of the United States:

I communicate to Congress, for their information, a letter from the person acting in the absence of our Consul at Naples, giving reason to believe, on the affidavit of a Captain Sheffield, of the American schooner Mary Ann, that the Dey of Algiers has commenced war against the United States. For this no just cause has been given on our part within my knowledge. We may daily expect more authentic and particular infor-

mation on the subject from Mr. Lear, who was residing as our Consul at Algiers.

TH. JEFFERSON.

FEBRUARY 9, 1808.

The Message and letters therein referred to were read, and ordered to lie for consideration.

SHIP MANILLA.

Mr. ADAMS reported, from the committee to whom was referred, on the 16th January last, the memorial of Joseph Chase and Jared Gardner, agents to and on behalf of the owners of the ship Manilla and cargo; and the report was read, as follows:

The material facts stated in the memorial appear to be these—

That the act of Congress, suspending the commercial intercourse between the United States and certain parts of the island of St. Domingo, passed the 28th of February, 1806, and expired by its own limitation in one year from that day.

That, by an act passed on the 24th of February, 1807, this suspension was continued until the present session of Congress.

That, by a provision in the first of these acts, its operation was to commence from and after notice of its passage to the several collectors; which provision was omitted in the second.

That, on the 7th of March, 1807, after the expiration of the act first abovementioned, and before the renewal of the suspension was known to the memorialists or to the collector of the customs in the island of Nantucket, they obtained from him a regular clearance for the ship Manilla and her cargo, for Gonaives, in the said island of St. Domingo, in pursuance of which the vessel sailed, and was, by the latest advices, lying at Port au Prince, laden, and waiting for orders from the owners, who are desirous of ordering her to proceed for some port in the United States, with her cargo.

That complaint having been made to the collector of the port of Nantucket, he had noted his intention to seize the vessel and cargo, on her return from the voyage, for the purpose of having them condemned, as forfeited for infraction of the last mentioned act of 24th February, 1807.

That after notice of this complaint, the memorialists petitioned the district judge for the district of Massachusetts, who examined and transmitted to the Secretary of the Treasury, a statement of the facts, with the application of the memorialists, for the exercise of the mitigating power vested by law in him.

That the Secretary of the Treasury declined interfering until the law should have had its full operation, on a doubt entertained by him whether the renewal of the suspension was not really known, in the island of Nantucket, at the time of the clearance and departure of the vessel; which fact, he supposed, would best be ascertained upon the trial, after the seizure should take place.

Under these circumstances, the memorialists have applied to Congress for relief. And your committee, highly approving the vigilance and caution which governed the Secretary of the Treasury, in his determination on the case, are, however, of opinion, that the request of the memorialists is reasonable and ought to be granted.

They observe, that the collector of Nantucket, in his affidavit, exhibited before the district judge of Massachusetts, declares, upon oath, that, at the time when the Manilla cleared out, he had no knowledge of the act by which the suspension of the trade with St. Domingo was continued; and that he has no reason to believe that the memorialists had any knowledge of it. To corroborate this evidence, the committee remark that it was scarcely possible it should have been known there, even by an extraordinary course of conveyance, in so short a time, and at that particular season of the year.

As the option of ordering their ship to the United States must, at all events, remain with the memorialists, they might, with some reason, hesitate in their decision, if they should have reason to expect that still more decisive proof of a negative kind will be required on the trial, to redeem them from the penalties of the forfeiture. Nor does it appear just or necessary to expose them to the necessity of exhibiting such proofs, and incurring the expenses and trouble of a trial, at a distance from their own residence, if they should find their interest in ordering the vessel to return to a port in some other district of the United States than their own.

With these impressions, the committee request leave to report a bill for the relief of the memorialists, and conformable to the prayer of their petition.

Mr. ADAMS then obtained leave to bring in a bill for the relief of Joseph Chase and Jared Gardiner; which was read, and ordered to the second reading.

THURSDAY, February 11.

The bill for erecting a light-house, and placing buoys at the places therein mentioned, was read the second time.

The bill for the relief of Joseph Chase, Jared Gardner, and others, was read the second time. On the question, Shall this bill be engrossed and read a third time? it was determined in the affirmative.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act supplementary to the act, entitled 'An act to prohibit the importation of certain goods, wares and merchandise;" in which they request the concurrence of the Senate.

The bill last mentioned was read, and ordered to the second reading.

TREASON AND OTHER CRIMES.

The bill reported by Mr. GILES, for the punishment of treason and other crimes and offences against the United States, was considered as in Committee of the Whole. After having been read by sections from the Chair, some verbal amendments were made to the first section. The words of this member of the bill are as follow:

Be it enacted, &c., That if any persons owing allegiance to the United States of America, shall levy war against them, by assembling themselves together with intent forcibly to overturn or change the Government of the United States, or any one of the Territories thereof, or forcibly to dismember the said United States, or any one of them, or any one of the Territories thereof, or forcibly to resist the general execution of any public law thereof, or forcibly to take possession of, or hold any fort, magazine, dock, navy yard, or of any public vessel of the United States, or to forcibly invade or hold any part of the United States, or of the Territo-

ries thereof, against the authority of the United States, or if any person or persons shall traitorously aid or assist in the doing any one of the acts aforesaid, although not personally present when any such act is done or committed, and being convicted of any one or more of the aforesaid acts, on confession in open court, or on the testimony of two witnesses to the same overt act of treason, whereof he or they may stand indicted, such person or persons shall be judged guilty of treason against the United States, and shall suffer death.

These alterations having been agreed to, chiefly in the form of the bill, by the transposition of certain words—

Mr. MITCHILL expressed his disagreement to the principle itself of the bill. He questioned whether Congress had authority to act upon the subject. The powers of the Legislature were, on the crime of treason, limited by the Constitution; and it deserved mature consideration, whether, on the present occasion, we were not about to transgress the bounds within which we ought to move. By the third section of the third article of that great charter of our rights and privileges, it is declared that "treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court." Here is the definition of treason in the Constitution, that great national instrument, which is the law-paramount of the land, and by which Congress itself must be governed.

The Convention of 1787, when devising a frame of Government for a free people, well understood the commotions that frequently agitated societies of men claiming the right to speak and to act as they pleased. That sagacious body possessed perfect knowledge, from history, of the proscriptions and attainders which an overbearing majority were but too prone to pass upon those who differed from them in their preference of one man or measure to another, or who thwarted their views of interest or ambition, of resentment, or power. They, therefore, provided a salutary check upon the will of the Congress itself, thereby guarding against that heat and violence which the collisions of party have been often observed to produce. Thus was a security enjoyed by the minority of the two Houses, and of their adherents and supporters throughout the nation, against the exterminating spirit which the majority might feel, and, in an evil hour, be tempted to exert.

Such was his understanding of the meaning of this part of the Constitution. But the bill before you, Mr. President, has a bold and innovating aspect. It ventures into declarations of various actions, which shall be deemed to constitute levying of war. If this proceeding is correct, it will be in our power, or in the power of a future Congress, to declare that certain other actions, not specified in this bill, shall also be construed as criminal in the same atrocious degree. And a succeeding Legislature may enlarge the catalogue, until constructive treasons shall be multiplied to a most alarming amount. The people of this free and happy country will be disarmed of the shield by which their sages and patriots, who devised the present admirable frame of Government, intended to protect them, even from legislative injury. And they will be exposed to all the multiplied evils, of treasons declared by Congress; and it may possibly happen, in some future time, less auspicious than the present, that the majority of that body may be actuated by passions and stimulated by motives of a sanguinary tendency. We ought to take measures of precaution against such alarming consequences. I feel a strong repugnance to the demolition of established landmarks. I have, said he, a great veneration for these monuments, erected by our predecessors. And, I fear, the enactment of the present bill will be accompanied with the overthrow of one of the most valuable safeguards of the Constitution. He was willing to admit the great uncertainty with which the doctrine of treason was clouded. All our trials for that offence had demonstrated the unsettled condition of the law. But it was by no means certain that this was a sufficient reason for Congressional interference. He felicitated himself, and he congratulated the Senate and his country, that arraignments for treason had hitherto been few and rare. There had not been time nor opportunities enough to elaborate the ultimate decisions of the law. The human mind did not acquire knowledge by intuition, but by experience. The march of the understanding in the investigation of truth was slow. In cases of jurisprudence, as well as in every other intellectual research, the advances toward truth were gradual. Case after case must be studiously considered, judgment after judgment must be rendered and revised, and consequence after consequence traced to their terminations. In such a course of proceeding, it might happen, according to the amount of business which occurred, that generation might follow generation, and age succeed to age, before the *summa ratio*, the high result of reason on the subject, could be attained. According to this method, of perfecting the law by practice, many trials for treason would be necessary to make its exact meaning known. And, for his own part, he was willing to postpone for centuries this painful mode of delineating the endless number of species and varieties that a Legislature could, in a day, arrange, under the generic term of treason.

But, why was it necessary for Congress to expound the Constitution? Was there not a department of the Government, to which the interpretation of the statutes enacted by the two Houses, treaties concluded with foreign nations by the President and Senate, and the great national act of the Convention, as ratified by the several States, was specially entrusted? He meant the body of the Judiciary, consisting of men selected from the class of citizens, for the express purpose of declaring what the law is. It seemed more orderly and regular to permit the judges to remove the existing obscurity in the law, by the exercise of their professional talents, than to alter by statute a course of investigation which con-

formed to the true theory of the Constitution. It is certain that inconveniences of a serious kind do exist; but had we not better bear them than run the risk of rendering them worse by tampering? It would be lamentable indeed if the remedy we are about to apply should prove worse than the disease. It might, perhaps, be a fault in him that he regarded the courts of justice with a sort of habitual reverence. He owned that he might be mistaken in viewing the present invasion of their province with a sentiment that alarmed his solicitude while it awakened his sensibility. But so it was. He would not conceal his preference to the tried and settled method of deducing the rules and maxims of the law through the constituted tribunals.

Mr. M. said, he would state another consideration, which was very impressive on his mind. It was the power claimed and exercised by the judges to repeal or nullify statutes by declaring them unconstitutional. Suppose the bill on your table, Mr. President, should pass; and it should afterward be considered by the Judiciary as a statute which the Constitution forbade Congress to enact? Would it not be pronounced void, and all proceedings under it be discontinued or dismissed? This, then, is the dilemma to which we are reduced; if Congress proceeds in the manner proposed by the bill to define treason, and their acts are binding upon the judges, then succeeding Congresses may multiply the species of those offences to any number that may suit the purposes of an infuriated majority, and the courts be compelled to carry those acts into operation, however mischievous or ruinous; or, if statutes which, in the opinion of the judges, militate against the spirit and letter of the Constitution, are declared by them to be of no force or effect, we certainly legislate to no purpose. As to the power of deciding on the unconstitutionality of statutes, the courts had, it was well known, exercised it in several instances. Many able statesmen had been induced to believe this was a sound and legitimate employment of their functions. And as the powers granted by the Constitution were at present understood and exercised, he doubted whether, even if this bill should ripen into a statute, it would bear the test of judicial scrutiny.

These were imperfect sketches of some of the ideas which he entertained on this important subject. They were uttered in this incipient stage of the debate for the purpose of gaining further information. No one could be insensible of the toil that had been expended by the committee, and more especially by his honorable and learned friend, the Chairman, in preparing it. He wished for a full discussion of this great question, and he entertained no doubt it would be examined with a seriousness worthy of so "high an argument."

For the purpose, therefore, of bringing the subject to a point, and of inviting the supporters of the bill to offer all the reasons they may think proper to urge in its support, Mr. M. concluded by making a motion to strike out the section.

Mr. GILES then rose, and delivered a speech substantially as follows:

He said, that on a subject of so much delicacy, difficulty, and importance, as the one now under consideration, it was natural to expect that the committee who reported the bill would be called upon to present to the Senate the reasons which had induced them to advocate the principle upon which that bill was predicated. That, as he considered each individual gentleman of that committee better qualified than himself to state the general motives operating on the committee, and, certainly, to state his own individual impressions upon the subject, Mr. G. would confine himself to stating some of the leading motives of his own conduct in introducing the principle reported in the bill.

Mr. G. begged to be indulged with a few preliminary observations, which, although not directly in point upon the Constitutional question presented for discussion, would, ultimately, be found to be not without some bearing upon it.

Mr. G. proceeded to observe that one great object of every Government was the protection of the rights of individuals, and however diversified the forms of different Governments may have been at different times, they have all, at all times, concurred, at least in this one point, that one of the most effectual means of protecting rights is the punishment of wrongs. In the execution of this delicate power, so peculiarly interesting to the governed, different Governments have been variously organized as to the manner of executing it. In Governments founded on force, the power of punishing has generally been left solely to the will and pleasure of the Executive. In Governments founded on consent, the modifications of this power have been various, according to the degree of confidence or jealousy entertained by the people towards their rulers. Modern jurists have extended their political speculations very far, in multiplying barriers for the protection of innocence against possible or presumed oppressions on the part of the Government, and it is, even now, questionable whether they have not extended them so far as to have them practically converted into shields for the protection of guilt—an effect that never could have been intended by the most speculative philanthropists. Indeed, it has been seen that, in a nation celebrated for its political intelligence, as well as for its military prowess, the visionary idea was once conceived of placing the protection of all rights upon the sole basis of the perfectibility of man. But, if this political vision was ever attempted to be reduced to practice, it was soon abandoned, because it was found not suited to the meridian of even that gallant nation who had the credit of the invention. Hence, I conclude that the power of punishing wrongs is an essential ingredient in the formation of all Governments, and that it ought not to be so limited and restrained, as to destroy its practical energy. The Constitution of the United States displays much of this spirit of jealousy against its administrators, and the amendments to it still more. Of course they impose many limitations and restraints upon the Government in the execution of the power of punishing. This may be

accounted for by the circumstances which preceded and gave rise to the Constitution and its amendments. The American Revolution was produced by the oppressions of a distant Government, and in the formation of all the State constitutions which preceded that of the United States, the whole of which was founded upon the fair consent of the people, this natural effect was produced, viz: that in the formation of their own governments, the people transferred a great portion of the jealousies they felt against the rulers of a distant Government to the rulers they were about to establish for their immediate Government at home. The Constitution of the United States, although formed some time after the Revolution, yet exhibits a great portion of the spirit of jealousy produced by it, and the amendments still more, probably from the passions called into action by the eloquent and animated discussions against the adoption of the Constitution itself. The formation and adoption of the Constitution of the United States are deemed to be among the most wonderful political events ever presented to the contemplation of the human mind. Considering the cotemporaneous passions excited by the conflicting systems of policy observed by the different States in relation to each other, the strong jealousies existing in relation to real or supposed differences of interest amongst the different States, and highly excited by animated discussions upon great national objects, just preceding the calling the Convention, the differences of habits, manners, and opinions, amongst the people in different parts of the United States, &c., &c., it is wonderful that a Constitution, founded on a spirit of mutual concession, should be formed, so admirably calculated to combine and protect the interest of the whole, and, at the same time, so peculiarly adapted to the peculiar character, genius, and temper of the American people.

In addition to these and many more difficulties, the Convention were without a model for imitation. They had to solve the new and difficult political problems of extracting from pre-existing state governments, all powers of a general nature, and of leaving with them the exercise of all powers of a local nature; and these powers, thus selected, were to be so modified and adjusted as to suit the high and jealous temper of the American people. Notwithstanding all these difficulties, it will be found, upon the most critical examination of the instrument, that, whilst it contains sufficient energy completely to effect the object of its institution, it affords to innocence the most complete protection against the oppression of Government that ever has been devised by any political institution. To effect this great object, it was determined to distribute these general powers amongst three great departments forming the Government of the United States, the Legislative, Executive, and Judiciary departments. Mr. G. said this adjustment had been made with such consummate wisdom and skill, that, whenever it had been made his duty to examine the arrangement, his reflections had always resulted in new and increased admiration of the excellency of its provisions. The theory of three distinct departments in government is, perhaps, not critically correct; and, although it is obvious that the framers of our Constitution proceeded upon this theory in its formation, yet, in the practical adjustment of the departments to each other, it was found impossible to carry this theory completely into effect. In the nature of things there can be but two great departments in government: the Legislative, whose duty it is to prescribe rules of conduct, or in other words to make laws for the government of the people; the Executive, to carry those laws into effect. But as from the imperfection of language the meaning of the laws is not definitively understood, the Judiciary department is introduced to explain the meaning of the laws prescribed by the Legislature—to aid the Executive in carrying those laws into effect. Hence, it is obvious that the Judiciary is a branch of the Executive department, and, accordingly, under the Constitution, the President appoints all judicial officers, and, except the judges, all other officers of the courts hold their offices during his pleasure.

Mr. G. observed it was not his intention or wish to legislate into the Constitution one scintilla of power not intrinsically contained in the instrument itself, nor, by a weak or timid exercise of the powers it does intrinsically contain, to paralyze or destroy its energy, and thus to counteract the great objects of its institution—the common defence and general welfare. It will be observed, said Mr. G., that he did not use these terms as conferring on the Government any power whatever, but merely as the ends for which the specified powers were conferred; nor did he propose to disturb the distribution of the powers among the several departments of the Government. He had made these remarks to rescue the Constitution from certain absurdities which had been attributed to it by the application of certain generic and technical phrases in the interpretation of it, instead of examining its own intrinsic organization. For instance, superficial observers take it for granted that the three great departments of the Government are co-ordinate, and independent of each other. It is to be observed that the words *co-ordinate*, *independent*, are not to be found in any part of the Constitution. They are borrowed from the technical phraseology of another country, and do not apply to the Constitution of the United States, at least not without great limitation. If by the word *co-ordinate* is meant that the Judiciary Department is equal in dignity, *co-ordo*, it is admitted. If it be meant in point of time, *co-ordo*, it is not the fact. The Legislative department pre-existed the Judiciary department; for, according to the Constitution, the establishment of the Judiciary department was entrusted to the Legislative department, and, of course, that department must necessarily pre-exist the department to be established by it, and the fact is well known to be so. With respect to the word *independent*, as applicable to the Judiciary, it is not correct, nor justified by the Constitution. This term is borrowed from Great Britain, and by some incorrect apprehension of its meaning

there, or from some other cause, is applied here to the department itself, instead of the officers of the department. In Great Britain the phrase is "an independent judge," not "an independent judicial department." According to the English Constitution, such a phraseology would be absolute nonsense. In this country the terms have been used as synonymous, whereas there is the most palpable difference both in the form and effect of their meaning. An independent department of a Government is conceived to be a department furnished with powers to organize itself, and to execute the peculiar functions assigned to it without the aid, or in other words, independent of any other department. A moment's attention to the Constitution will serve to show that this is not the Constitutional character of our Judicial department. An independent judge may be defined to be a person, who, in the exercise of judicial functions, is placed above temptation in the discharge of his judicial duties; or, in other words, a judge who will neither gain nor lose anything by deciding for or against the Government, or for or against any individual, or number of individuals; or, a judge whose salary is fixed, and who does not hold his office at the pleasure of another person.

In England the King is the fountain of honor and justice, and formerly decided upon the meaning of the laws in his own person; afterwards, that branch of executive duties was confided to his commissioners, who were appointed by him, held their appointment during his pleasure, and were dependent upon him for their compensations, until by the statute of 13 of William III., it was declared that the judges should hold their offices during good behaviour; still, however, their offices were vacated upon the demise of the Crown until the 1st of Anne, when it was declared that the offices of the Judges should not be vacated until six months after the demise of the Crown; and, finally, by a statute of 1st of George III., the salaries of the judges were fixed, and it was declared that their offices should not be vacated upon the demise of the Crown. This statute completely established what in England is called *the independence of the judges.* But to infer from this that the judicial department there is independent of the Parliament, would be an absolute misapplication of terms, and incompatible with every principle of the British constitution. From these observations it is not to be inferred that our Constitution is precisely analogous to the British in all these respects, but to show the meaning of the term "independent," in the country from which it was borrowed, and its misapplication to our Constitution. It was his wish to discard these technical, general terms, which rather embarrass than assist us in the correct interpretation of the Constitution. It was his wish to examine the instrument, and to deduce our interpretation of it from its own context. For whatever degree of independence is attached either to the judicial department, or to the judges themselves, according to the Constitution, it was his wish should be fully enjoyed by the department or the judges without the smallest abatement; but the Constitution, as it is, should be a standard of interpretation, not what it is described to be by general borrowed misapplied phrases.

With this general exposition of the Constitution, he would now proceed to examine the precise question under consideration. The question is, can Congress declare by law what acts amount to treason against the United States under the Constitution? He said that from the best reflections he had been able to bestow upon the subject, under a strong sense of the duty imposed upon him, he had no doubt but Congress can and ought to do so. And since his reflections he had wondered that he ever had doubted the legislative right. The first clause in the Constitution upon which this question arises is in the following words:

"Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid or comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."

Mr. G. said that the only reason which could be deduced from this clause for excluding Congress from passing all laws which might be deemed necessary and proper for carrying into effect the power therein contained, was, that in the distribution of powers, this particular power was classified amongst the judicial powers. But it will be observed that it is not directed exclusively to the judiciary, nor legislative department; and it will also be observed, that some of the powers classified under the judicial department are particularly directed to the legislative department. Hence it may be fairly concluded, that the mere classification of this power with the judicial powers is not of itself sufficient to exclude the necessary legislative power for carrying it into effect.

A reason however may be assigned, perhaps not satisfactory to all, for this classification of powers. It is derived from the last part of the clause, which seems to be a limitation to the judicial, as well as legislative department. This part of the clause requires two witnesses, at least, to the overt act of treason, as indispensable to a conviction; whereas in other criminal cases, conviction may be had, according to the ordinary rules of evidence in courts, upon the testimony of one witness. This limitation upon the ordinary rules of evidence in courts, would of itself have justified the classification of this power according to the Constitutional arrangement. Hence it appears irresistibly conclusive, that, according to this particular clause of the Constitution, the power of declaring what act shall amount to the treason of levying war, and of adhering to the enemies of the United States, is conferred on the Government generally, and not on any department exclusively.

This clause must evidently be considered, both as conferring power and limiting its exercise. The word "consist" is the word conferring power; the word "only" is the word limiting its exercise.

The word "consist" is directory to the Government generally, and not to any department exclusively. The word "only" excludes from the whole Government the power of introducing all constructive or imaginary treasons, and limits its power only to the two species of treason included within that term, to wit: the treason "of levying war" and "of adhering to the enemies of the United States." The word "only" therefore in this clause relates only to the species of treasons embraced by it, and not to any particular acts which may amount to treason under either of these species. Hence, the clear and obvious language of the Constitution is this: the Government of the United States may declare what acts amount to the treason of "levying war and adhering to the enemies of the United States," but it shall not declare any other act whatever treasonable. The reason of this arrangement will be the more obvious, by reference to the doctrine of treason in the country from which these terms are borrowed. In England, exclusive of the two species of treason recognised by our Constitution, there are various other treasons, and many of them constructive; such as imagining the King's death, &c.; showing too much civility to the Queen or Princesses, &c.; counterfeiting the King's coin, &c. The great object therefore of the Constitution was to exclude from the Government of the United States this whole family of treasons; and the terms used are extremely proper for this exclusion and for the inclusion of the two species only recognised by the Constitution.

But it is said treason is already defined by the Constitution. Is the fact so? Let the inquiry be made; and also the extent to which the definition goes. "Treason against the United States 'shall consist only in levying war against them, 'and in adhering to their enemies, giving them 'aid and comfort." Two species of treason are here defined; but no act amounting to either species of treason is defined. Ask the question, what is treason against the United States? The Constitution answers, "levying war against them, or adhering to their enemies." Reverse the question, what is levying war against the United States, or adhering to their enemies? The answer is, treason. No act which will amount to either of these offences is defined. This definition, although extremely useful as a guide to the Government, is of no practical use to the citizen, because it gives him no information of any act which amounts to treason; and which, if he commits, he will be guilty of treason, and subject to the highest punishment known to our laws. This knowledge of the nature and tendency of acts is the only knowledge that can be useful and necessary to the citizen.

It appeared to him wonderfully strange that offences the most complicated in their nature, the most dangerous in their effects to society, and the most fatal to the individual committing them, should not be explained to the people, but should be locked up in the breast of the judge, and that an attempt to explain them legislatively to the people should be thought to be an alarming invasion of their rights, if not criminal in itself. But if the terms levying war, &c., do not define treason, it is presumed that some gentleman in his place will tell us what specific acts will constitute the offence; for his part he had paid great attention to the subject, and in the present state of things, he acknowledged himself perfectly incompetent to it. Nor would the difficulties be lessened by a recurrence to all the judicial opinions yet given upon the subject. These attempts had demonstrated not only the incorrectness of the supposition that these treasonable acts were defined, but the indispensable necessity of some legislative definition; for it is believed that no two judges have yet delivered the same opinion upon some of the most essential characters of many of these acts; and if judges themselves should not be able to comprehend, and precisely to fix this Constitutional definition, how can it be expected that the people at large can do so? He had always been taught to believe that one essential characteristic of a free from a despotic Government consisted in giving full information to the citizen of every penal act, and the punishment consequent upon its commission; and is there nothing in the Constitution which recognises this principle, and almost makes it injunctive upon the Government? In the 6th article of the amendments to the Constitution, most of which may be considered as a bill of rights, I find these words: "In all criminal prose-'cutions the accused shall enjoy the right to a 'speedy trial, &c., and be informed of the nature 'and cause of the accusation," &c. For what purpose should he be informed of the nature and cause of the accusation; if, when he is informed of both, he is unable to ascertain by examining the law whether he has been guilty of any offence or not? And is it not of infinitely more importance to the citizen to know the nature and consequences of any particular act he is about to commit, than to be informed of the nature and cause of his accusation; when, after he shall have been thus informed, he is unable to ascertain by any law whether the nature and cause of the accusation against him be criminal or not? Indeed, without the knowledge of the criminality of the charge, a knowledge of the charge itself would be of very little advantage to him. Again, suppose a citizen should be indicted upon the identical words of the Constitution, "of levying war," without the specification of any particular overt act amounting to that offence, would such a definition be sufficient for conviction? Certainly not. More definition is therefore required than can be found in the Constitution.

The next question which presents itself for consideration is, how can this further definition be obtained? What department is most competent to it? What is the proper department under the Constitution? He said, there can be no doubt but the legislative is the only Constitutional and competent department for that purpose.

Mr. G. said, it would be recollected that according to the interpretation put upon the clause of the Constitution first read, it was stated that the power of declaring or ascertaining the acts which

would amount to the treason of "levying war, &c., and adhering to the enemies, &c.," was conferred on the Government generally, and not on any department exclusively. If this position be correct, which appeared to him to be a plain matter of fact, he would now call the attention of the Senate to another clause in the Constitution, which he considered directory as to the proper department for exercising this power. The clause he alluded to was in the eighth section of the first article of the Constitution. He would read both clauses together—third section, third article:

"Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." Eighth section, first article: "Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof."

Now ask the question, is the power of declaring or ascertaining what acts amount to the treason of "levying war against the United States, or of adhering to their enemies," &c., vested by the Constitution in the Government of the United States? Answer. It certainly is. What is the proper department for passing all laws necessary and proper for carrying this power into execution? The Constitutional answer certainly is, Congress. If this exposition be correct, and it appeared to him to be self-evident, it is no longer a Constitutional question, but it is a question of expediency. Is it necessary and proper, under existing circumstances, to pass such laws? This question has been before answered in part, but would be further examined presently. The clause in the Constitution last read, had also had a general cabalistical phrase applied to it. It is called "the sweeping clause," and attempts have been made to infer from it general powers to the Government; although he should discard that interpretation, and readily admit, that it confers no power of itself upon the Government; it is of infinite importance in adjusting all powers vested in the Government and by the Constitution. It determines upon the department, in which the ultimate power of the Government is vested. The first part of the clause relates to powers previously, and specifically given to Congress. The words are, "to make all laws necessary and proper for carrying into execution the foregoing powers." This, although extremely proper, is the least important part of this clause; because all necessary and proper means for carrying into execution all the powers specifically vested in Congress, might have been inferred; it was however, perhaps, better to express it, and leave nothing to inference; but the remaining part of the clause is the real operative part of it. The words are, "and all other powers vested by this Constitution in the Government of the United States, or any department or officer thereof." The wisdom and foresight of the framers of our Constitution, is particularly discernable in this article. They clearly foresaw, that many difficulties might arise in the execution of many of the powers vested in the Government of the United States or in some of the departments thereof, which, at that time, could not be conceived or imagined. For the purpose, therefore, of meeting these difficulties, and insuring the due execution and administration of the Government, this clause was introduced, declaring, in effect, that whenever any such difficulties should occur in relation to any powers vested in the Government, &c., Congress should have power to pass all laws necessary and proper for relieving them from such difficulties, and carrying such vested powers into due execution. This clause, in his opinion, therefore, must be considered as also settling all questions among the departments respecting the ultimate deposite of power.

But a formidable difficulty is here interposed. The danger of legislating on this subject. It is said, if Congress should undertake to declare what acts amount to the treason "of levying war, and adhering to the enemies, &c., they may declare acts treasonable, not embraced by these definitions and limitations; and supposing they should do so, where is the remedy? In the first place, it may be observed, that there is no such supposition warranted by the Constitution. The supposition itself is therefore unconstitutional. The Constitution has furnished certain guards against its violation, in this respect as well as in all others. The Representatives are chosen at certain short periods: are themselves subject to the same rules of conduct prescribed to others; and take a solemn oath to support the Constitution of the United States. It is believed that these guards are sufficient for the protection of the Constitution, and that the danger of its violation is merely imaginary; but in the next place, this supposition might be answered by another. Suppose the judges were to declare certain acts treasonable which are not embraced by those species of treason defined in the Constitution, where is the remedy? The danger in this case appears to be greater than in the other, and there is no remedy at all, because the judges are irresponsible; except, to use their own language, to God and their own consciences. They are not responsible to the people, who alone possess the ultimate censorial power; whereas their Representatives are responsible directly to them at short periods, and the President and Senate, indirectly, responsible to them at periods somewhat longer. But it can be demonstrated, that the Judiciary department, under its present organization, is utterly incompetent to the due exercise of this power, as will be clearly seen from the following statement.

The Supreme Court of the United States has no criminal power whatever. That power is confided to the circuit courts. There are eighteen circuit courts in the United States, including the circuit court of Columbia, and excluding all the Territorial courts. These courts are composed of twenty-eight judges, and are held at eighteen different places, without any connexion with each other. As far as the opinions of these judges have been ascertained, it is believed that no two

of them have concurred as to all the acts which amount to the treason of levying war, the only species that has yet been presented to them for adjudication. The other species, "of adhering to the enemies of the United States," &c., not having yet occurred, the United States having enjoyed almost an unintermitted state of peace ever since the adoption of the Constitution. If that species of treason should become frequent, a circumstance highly probable, in case of a change in the state of the nation to a state of war, a similar result may be expected. What prospect of settling principles correctly can we have, if eighteen different tribunals should settle the same question in eighteen different ways? Yet his honorable friend from New York seems disposed to wait with patience until some certainty can be established in the usual course of judicial decision, which, even in the event of concurring opinions, would not happen in a century; and unless there should be some new order of things in that respect, could never happen at all. Instead of certainty in the ascertainment of offences, confusion incalculable must be the consequence.

But let us see what the Chief Justice says upon this subject, in his opinions delivered upon the trials at Richmond:

"It is true, that in that case, after forming the opinion that no treason could be committed, because no reasonable assemblage had taken place, the court might have dispensed with proceeding further in the doctrines of treason. But it is to be remembered, that the judges might act separately, and perhaps at the same time, on the various prosecutions which might be instituted, and that no appeal lay from their decisions. Opposite judgments on the point would have presented a state of things infinitely to be deplored by all. It was not surprising then that they should have made some attempt to settle principles which would probably occur, and which were in some degree connected with the point before them."

"This court is told that, if this opinion be incorrect, it ought not to be obeyed, because it was extra-judicial. For myself, I can say that I could not lightly be prevailed on to disobey, were I even convinced that it was erroneous; but I would certainly use any means which the law placed in my power to carry the question again before the Supreme Court for reconsideration, in a case in which it would directly occur and be fully argued."

Here we see the Chief Justice pathetically deploring the consequences of opposite decisions upon the same point, and lamenting his inability to bring these cases before the Supreme Court. For what? He tells us to *settle principles*, or, in other words, to prescribe rules for the government of the circuit courts, in which consists the very essence of legislation. Hence the judicial legislation of the Supreme Court is to exclude Congressional legislation; but he evidently admits the incompetency of the circuit courts to legislate upon this subject; and, unfortunately for the legislation of the Supreme Court, it has no jurisdiction in criminal cases; and, therefore, there is no legal mode of bringing the cases before them for the purpose of settling principles, or in other words, for the purpose of legislation. Hence will result all the confusion which the Chief Justice so properly and pathetically deplores. Yes, sir, the uncertainty and confusion resulting from contradictory decisions of your courts upon the doctrine of treason against the United States will be such, that no man can know when an act is innocent or guilty, and when his innocence or guilt will very much depend upon the court before which he may happen to be brought for trial. Our situation will be, probably now is, like that described in England in the time of Henry IV., after a great many statutes had been passed, and contradictory adjudications had been made in relation to this same doctrine of treason. In the preamble to the statute of the first of Henry IV., the situation of the nation, in relation to treason, is thus described: "That no man knew what he 'ought to know, or to do, or to say, or to speak, 'through doubt of such pains." This, if not now, will inevitably be the case of this country, unless some legislative corrective of the present system be applied. There are also great objections to the forms of judicial legislation; they consist too much in inference, too little in dictum. They want the words, "Be it enacted," &c. The judges blend their reasonings with their inferences, so that it requires great legal skill to make the proper analysis. A plain man of the best understanding could never do it. The enacting clauses are obscured by the preamble. It is like enacting our speeches, interspersed with our laws. Take for instance the judicial opinions lately delivered in the United States upon the various questions of treason which have been brought before the courts, and ask yourself this question: Do you understand the doctrine of treason now better than you did before the opinions were given? Is not the subject rendered more confused and uncertain? Can you tell whether accessorial treasons in England are principal treasons in the United States? Judge Chase and others say they are. Judge Marshall says he does not know whether they are or not, but his reasoning would go to show that they are not. In the doctrine of treasons, this is an all-important question; and if the judges cannot agree, how can plain men settle the question, and why is it that the people should be kept in the dark upon this branch of our penal laws alone? It cannot be on account of the heinousness of the offence, its dangerous tendency towards society, nor its fatal effects to the individual committing it. All these reasons plead loudly in favor of telling the people plainly what the acts are involving such consequences, that they may take care to avoid their commission.

He then proceeded to examine some further consequences of a different interpretation of the Constitution, to which he begged the most serious attention of the Senate. If the judges are to declare what acts amount to treason against the United States, without any legislative aid, one of two consequences will inevitably result. Either the statutes of England, in relation to these species of treason, the decisions of the English judges thereupon, and perhaps the opinions of some of their elementary writers, will become the law of the United States, and even immutable or funda-

mental law; or all acts amounting to treason must be transcribed only on the minds of the judges. Upon the first of these points, let us examine the decisions of the judges themselves.

He would first call the attention of the Senate to a rule of court laid down in the trial of Fries, and found in the Appendix to Tucker's *Blackstone*, pages 14 and 15:

"Judge Chase, on the subsequent trial of Fries, declared 'That the court would admit, as a general rule, of quotations from the English books; not as authorities whereby they were bound, but as opinions and decisions of men of great legal learning and ability. But even then the court would attend carefully to the time of the decision, and in no case must it be binding on the juries.' As this was pronounced as a general rule by the court, and not as the opinion of a single judge, we may consider it now settled that the English authorities are not binding as precedents; consequently they do not form part of the law of the land, but are to be respected only as the opinions of men of great legal learning and ability, which may nevertheless be canvassed as freely as the opinions of other men. Neither are we bound to suppose that the framers of our Constitution meant to adopt those decisions as a guide to our courts in the interpretation of the definition of treason against the United States."

According to this decision, English authorities are to have no binding influence on the courts, but are to be respected as the opinions and decisions of men of great legal learning and ability.

Let us now turn to the decision of the Chief Justice at Richmond, with this same rule of court before him. It is suggested to have been before him, because this celebrated treatise of Judge Tucker, upon the doctrine of treason, was referred to in the same decision, and almost the whole of the Chief Justice's reasoning upon accessorial treasons was drawn from it.

"What is the natural import of the words 'levying war;' and who may be said to levy it? Had their first application to treason been made by our Constitution, they would certainly have admitted of some latitude of construction. Taken most literally, they are, perhaps, of the same import with the words 'raising or creating war,' but, as those who join after the commencement are equally the objects of punishment, there would probably be a general admission, that the term also comprehended making war, or carrying on war."

"But the term is not for the first time applied to treason by the Constitution of the United States. It is a technical term. It is used in every old statute of that country, whose language is our language, and whose laws form the substratum of our laws. It is scarcely conceivable that the term was not employed by the framers of our Constitution in the sense which had been affixed to it by those from whom we borrowed it. So far as the meaning of any terms, particularly terms of art, is completely ascertained, those by whom they are employed must be considered as employing them in that ascertained meaning, unless the contrary be proved by the context. It is, therefore, reasonable to suppose, unless it be incompatible with other expressions of the Constitution, that the term 'levying war' is used in that instrument in the same sense in which it was understood in England and in this country, to have been used in the statute of the 25th of Edward III., from which it was borrowed.

"It is said that this meaning is to be collected only from adjudged cases. But this position cannot be conceded to the extent in which it is laid down. The superior authority of adjudged cases will never be controverted. But these celebrated elementary writers, who have stated the principles of the law, whose statements have received the common approbation of legal men, are not to be disregarded. Principles laid down by such writers as Coke, Hale, Foster, and Blackstone, are not lightly to be rejected."

It cannot escape observation that the Chief Justice here expressly lays it down, that the laws of England, in relation to these species of treason, form the substratum of our laws, from which figurative expression, is evidently inferred an undeniable declaration, on the part of the judge, that the laws of England, in these respects, are the foundation (substratum) of our laws; or, in other words, the fundamental, immutable laws of the United States, and, of course, in their essential operation, a part of the Constitution of the United States. But, the Chief Justice goes further, and declares that the decisions of the English judges form a part of these fundamental laws, and even the principles in relation thereto, laid down by their celebrated writers, are not to be disregarded. It is hardly to be presumed that, before this declaration, it had ever entered into the imagination of any man, that our Constitution was composed of such materials. If it be the case, however, it is devoutly to be wished that these laws, decisions, and principles, of elementary writers, should be collated, printed, and annexed to our Constitution as legitimate parts thereof; and if Congress are to be excluded from all participation in the exercise of this authority, the Supreme Court could not render a greater service to their country than to make the collation with all convenient despatch, for the information of Congress, and still more for the people at large. But, sir, are there no objections to these substrata of our laws? On no one subject of jurisprudence in Great Britain have there been such monstrous perversions of justice, and such passionate and contradictory decisions, as on the doctrine of treason, and why? Because they have been almost always made in violent and troublesome times, and generally after bloody contests for the Crown. If his interpretation of the Constitution should be deemed incorrect, rather than hold some of his most important rights upon substrata like these, he had thought of preparing an amendment to the Constitution, to authorize Congress to declare what acts should amount to treason against the United States. But, in reflecting upon that subject, he found the eighth section of the first article of the Constitution as good a provision for that purpose as could be drawn by way of amendment, and he begged gentlemen to reflect upon it, and see whether they could prepare a better, to wit:

"Congress shall have power to pass all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

But, sir, let us now discard this doctrine of the Chief Justice, and take up the rule laid down by the court on the trial of Fries: that the British laws, decisions, and elementary principles, are not the substrata of our laws on the doctrine of treason, but merely entitled to certain respect in guiding the courts to correct decisions. I would then ask, where is the doctrine of the treason written? If our laws of treason are not taken from these sources, where are they written? Nowhere, unless on the minds of the judges. Sir, there are great objections to this sort of transcription: first, the transcript will be different on the mind of every different judge; second, it may be different upon the mind of the same judge at different times, and under different circumstances. The retina of the human mind is not fit parchment for the transcription of laws. It is too much like changeable silk. It may vary its complexion, especially when held up to political sunshine. He begged the Senate to take a view of the judicial proceedings which had taken place in the United States in relation to this subject. Without pretending to go minutely into the examination of the evidence before the courts on the trial of Fries, and the late trials at Richmond, a general view of the different results of these trials had always appeared extraordinary to him. Fries, and other ignorant Germans, from a very limited district of country, being hostile to an act of Congress, assembled themselves, and with arms forcibly rescued some persons from the custody of the marshal of Pennsylvania; the prisoners not being charged with treason, and as soon as the rescue was effected, returned peaceably to their homes, and, it is believed, never after assembled in arms for any other purpose. This was considered by the court as unquestionable treason against the United States.

The transactions disclosed on the trials at Richmond, seemed to be of a very different character. It appeared there, that a design to dismember the United States by force, and to establish a separate Government in the part thus separated, and also to seize upon, and include in such Government some of the territories of Spain, had been deliberately formed by the most active, daring, intelligent, and enterprising citizens of the United States. That partisans were engaged to effect this design, extending themselves from the city of New York, in the direction of the Lakes, and from thence to Orleans, and from Philadelphia, from this place, &c., to Pittsburg, and in that direction to Orleans, which appeared to be the first object of attack, and from whence further operations were to be determined on. That, in pursuance of this design, a number of men with arms had convened at the mouth of Cumberland, with the chief projectors of this enterprise at their head, and entered into a formal capitulation for surrendering themselves to the authority and laws of the United States, after having cautioned the acting officer of the United States against compelling them to shed blood in a civil contest by refusing their terms of surrender, and thus urging them to resistance. These transactions, according to the opinion of the court, unquestionably do not amount to treason against the United States, and the persons committing them ought not even to be committed for trial before the tribunal having cognizance thereof. But the assemblage is described by the judge as demeaning themselves in a peaceable and orderly manner; no act of violence was committed, nor any outrage on the laws practised. There was no act of disobedience to the civil authority, nor were there any military appearances, although the men were drawn up in something like a semicircle, &c., the capitulation, and its accompanying circumstances, to the contrary notwithstanding. This circumstance, however, was not thought worth mentioning by the judge in his recapitulation of the evidence.

These judicial results appeared strange to him, and he believed they did to every impartial man in the United States. He did not mean to infer from these circumstances anything more than that the highest judicial officers were not exempt from the frailties and feelings of human nature; nor did he mean to use them for the purpose of detracting one atom of independence from the judges; very far from it. He wished they were more independent than he feared they were. But he entertained a very different opinion of the honorable and dignified character of an independent judge; of a department in some respects dependent, and of a judge, who, forgetting the nature of his office, is perpetually aspiring not only to render his department absolutely independent, but to render it supreme over all the other departments of the Government; in the one case he is placed in the elevated and dignified attitude of distributing justice impartially among his fellow-citizens; in the other, he is reduced to the miserable political intriguer, scrambling for power; for when once this appetite for power is indulged, the sacred mantle of the judicial character will be found but a feeble barrier against its influence. There was nothing in names—it was not material whether they were called judges, or consuls, or censors—once place power before their eyes, and they would all, with an equal impulse, pursue the means best calculated to attain it. This is human nature; and, under such circumstances, raise this sacred mantle of the judge, and you will find concealed beneath it strong marks of the frailties common to human nature. Hence this argument, derived from the sacredness of the judicial character, had but little influence on his mind; and therefore could never be an inducement for him to yield to their claims to ultimate and unlimited powers; even the oaths taken by the judges have been suggested by them as arguments in favor of their claims to the ultimate power of the Government. Without seeming to recollect that their number is seven, and that the same oath is taken by above one hundred and seventy members of both Houses of Congress; and, as a further protection of the Constitution, Congress is composed of two branches, placed as mutual checks on each other.

He said, he would now detain the Senate only

a few moments longer, while he made a few observations on the only remaining clause in the Constitution connected with this subject. It is the last clause of the third section of the third article of the Constitution, in these words: "The 'Congress shall have power to declare the pun-'ishment of treason, but no attainder of treason 'shall work corruption of blood, or forfeiture, ex-'cept during the life of the person attainted." It will be here observed that this clause relates solely to legislative powers, although it is classified with the power of the judicial department. An inference has been drawn from this clause—as the power of declaring the punishment of treason, is expressly given to Congress, it excludes the inference that Congress may also declare what acts shall amount to treason. This, however, is a mere inference; and if that effect was intended by the framers of the Constitution, they would certainly have expressed it—for it is not possible to conceive, if this idea once presented itself to them, they would have left a subject of so much delicacy and importance to mere inference. This clause was evidently introduced with very different views, and, so far from its excluding a legislative declaration of the acts amounting to treason, it affords an argument in favor of that construction. This clause, like the preceding one, is intended both to confer power, and to limit its exercise. It gives to Congress the power of declaring the punishment of treason, but limits its exercise to attainder of blood only during the life of the person convicted. But may not Congress, consistently with this clause, apply different degrees of punishment to different degrees of treason? Are there not different degrees of moral turpitude, in different degrees of treason? And how can Congress possibly graduate according to the degrees of moral turpitude, different punishments to different acts, without defining the acts to which such punishments are to be applied? He acknowledged he could not see how it could be done without such definition. The doctrine of apportioning punishments to crimes, according to the standing of moral turpitude, has always been a favorite one in this country, and very probably, was not without its effect in introducing this clause into the Constitution. He said he had done enough, however, for his argument, if he had shown that the inference generally deduced from this clause was not warranted by it. He had now presented to the Senate the leading motives with him for introducing the principle of the bill; and if he had occupied more of their time, than was agreeable, he hoped the delicacy, difficulty, and importance of the subject would furnish his apology.

FRIDAY, February 12.

The bill, entitled "An act supplementary to the act, entitled 'An act to prohibit the importation of certain goods, wares, and merchandise," was read the second time and referred to Messrs. SMITH of Maryland, ADAMS, and MITCHILL, to consider and report thereon.

The Senate resumed, as in Committee of the Whole, the second reading of the bill for erecting a light-house, and placing buoys, at the places therein mentioned; and the President reported the bill amended; and on the question, Shall this bill be engrossed and read the third time as amended? it was determined in the affirmative.

The bill for the relief of Joseph Chase, Jared Gardiner, and others, was read the third time, and passed.

Ordered, That the consideration of the bill for the punishment of treason, and other crimes and offences against the United States, be further postponed until Tuesday next.

MONDAY, February 15.

Mr. MITCHILL presented the memorial and petition of Philip Turner, late of the State of Connecticut, but now of the State of New York, stating that, at the commencement of the Revolutionary war, he was appointed Surgeon General, and afterwards one of the fifteen hospital physicians; that, in June, 1781, he retired from the service; and that, on application to Mr. Howel, the postmaster, for settlement, there arose a difference of opinion, as to the allowance to which he was entitled, and your petitioner has remained from that time without his compensation, and now prays relief; and the petition was read and referred to Messrs. MITCHILL, BRADLEY, and FRANKLIN, to consider and report thereon.

Mr. TIFFIN, from the committee to whom the subject was referred, on the 18th November last, reported the bill to amend the act, entitled "An act establishing circuit courts, and abridging the jurisdiction of the district courts of the districts of Kentucky, Tennessee, and Ohio;" and the bill was read, and ordered to the second reading.

The bill for erecting a light-house, and placing buoys at the places therein mentioned, was read the third time, and ordered to lie for consideration.

TUESDAY, February 16.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States.

I communicate, for the information of Congress, a letter from the Consul of the United States at Malaga, to the Secretary of State, covering one from Mr. Lear, our Consul at Algiers, which gives information that the rupture threatened on the part of the Dey of Algiers has been amicably settled, and the vessels seized by him are liberated. TH. JEFFERSON.

FEBRUARY 15, 1808.

The message and papers were read, and ordered to lie for consideration.

The Senate resumed the third reading of the bill for erecting a light-house and placing buoys at the places therein mentioned; and the blank having been filled, the bill was passed.

The bill to amend the act, entitled "An act establishing circuit courts, and abridging the jurisdiction of the district courts of the districts of

Kentucky, Tennessee, and Ohio," was read the second time; and, after debate, the further consideration of the bill was postponed until to-morrow.

On motion, by Mr. GILES, it was agreed that the consideration of the bill for the punishment of treason, and other crimes and offences against the United States, be postponed until Thursday next.

A message from the House of Representatives informed the Senate that they have passed a bill, entitled "An act extending the right of suffrage in the Indiana Territory;" a bill, entitled "An act making appropriations for carrying into effect certain Indian treaties;" a bill, entitled "An act making additional compensation to the marshals for the districts of North Carolina and New Jersey;" a bill, entitled "An act making further provision for the disposal of the sections of land heretofore reserved for the future disposition of Congress;" a bill, entitled "An act to allow the importation of old copper free of duty;" a bill, entitled "An act for the relief of Edward Weld and Samuel Beebee;" also, a "Resolution to authorize the disposition of certain charts of the coast of North Carolina;" in which bills and resolution they request the concurrence of the Senate.

The bills and resolution were read. And, by unanimous consent, the bill, entitled "An act extending the right of suffrage in the Indiana Territory," was read a second time, and referred to Messrs. ANDERSON, TIFFIN, and ADAMS, to consider and report thereon.

By unanimous consent, the bill, entitled "An act making appropriations for carrying into effect certain Indian treaties," was read a second time, and referred to Messrs. SMITH, of Tennessee, ADAMS, and ANDERSON, to consider and report thereon.

By unanimous consent, the bill, entitled "An act making additional compensation to the marshals for the districts of North Carolina and New Jersey," was read a second time, and referred to Messrs. TURNER, CONDIT, and KITCHEL, to consider and report thereon.

By unanimous consent, the bill, entitled "An act making further provision for the disposal of the sections of land heretofore reserved for the future disposition of Congress," was read a second time, and referred to Messrs. FRANKLIN, GREGG, and MOORE, to consider and report thereon.

By unanimous consent, the bill, entitled "An act to allow the importation of copper free of duty," was read a second time, and referred to Messrs. ROBINSON, GILMAN, and SMITH, of Maryland, to consider and report thereon.

By unanimous consent, the bill, entitled "An act for the relief of Edmund Weld and Samuel Beebee," was read a second time, and referred to Messrs. GILMAN, THRUSTON, and ANDERSON, to consider and report thereon.

By unanimous consent, the "Resolution to authorize the disposition of certain charts of the coast of North Carolina," was read the second time, and referred to Messrs. ADAMS, FRANKLIN, and SUMTER, to consider and report thereon.

The following motion was submitted by Mr. GILES, for consideration:

Resolved, That a committee be appointed to inquire whether, under the laws establishing the several courts of the United States, the Supreme Court thereof is now authorized to issue the writ of habeas corpus in criminal cases; and to report whether, in their opinion, it is expedient that the authority to issue such writ should be vested in that court, and that the committee have leave to report by bill or otherwise.

On motion, by Mr. ADAMS,

Ordered, That the petition of Archibald McCall and others, presented on the 18th November last, be referred to the committee appointed the 3d instant, on the report of the Secretary of the Treasury on the subject of drawbacks on exportation, to consider and report thereon.

WEDNESDAY, February 17.

Mr. SMITH, of Tennessee, from the committee to whom was referred the bill, entitled "An act making appropriations for carrying into effect certain Indian treaties," reported it without amendment.

Ordered, That this bill be read a third time.

The Senate resumed, as in Committee of the Whole, the second reading of the bill to amend the act, entitled "An act establishing circuit courts, and abridging the jurisdiction of the district courts of the districts of Kentucky, Tennessee, and Ohio."

On motion of Mr. ADAMS to strike out the second section of the bill, as follows:

And be it further enacted, That, from and after the first day of July next, the district judge in the district of Ohio, shall be, and hereby is, entitled to a salary of fifteen hundred dollars annually, to be paid quarter-yearly, at the Treasury of the United States:

It was determined in the affirmative—yeas 21, nays 8, as follows:

YEAS—Messrs. Adams, Bradley, Condit, Crawford, Franklin, Gaillard, Gilman, Goodrich, Hillhouse, Howland, Maclay, Mathewson, Milledge, Mitchill, Parker, Pickering, Robinson, Smith of New York, Smith of Tennessee, Sumter, and Turner.

NAYS—Messrs. Anderson, Gregg, Kitchel, Pope, Smith of Maryland, Thruston, Tiffin, and White.

On motion, by Mr. ADAMS, the bill was recommitted to the original committee, further to consider and report thereon; and, on motion, by Mr. ANDERSON, Messrs. ADAMS and BRADLEY were added to the committee.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of Samuel Whiting," in which they request the concurrence of the Senate.

The bill was read, and ordered to the second reading.

THURSDAY, February 18.

The bill, entitled "An act for the relief of Samuel Whiting," was read the second time, and referred to Messrs. BRADLEY, WHITE, and ADAMS, to consider and report thereon.

Mr. FRANKLIN, from the committee to whom was referred the bill, entitled "An act making further provision for the disposal of the sections of land heretofore reserved for the future disposition of Congress," reported the bill with an amendment; which was read, and ordered to lie for consideration.

Mr. TIFFIN, from the committee to whom was recommitted the bill to amend the act, entitled "An act establishing circuit courts, and abridging the jurisdiction of the district courts of the districts of Kentucky, Tennessee, and Ohio," reported the bill with amendments; which were read, and ordered to lie for consideration.

On motion, by Mr. WHITE, it was agreed that the consideration of the bill for the punishment of treason, and other crimes and offences against the United States, be further postponed, and made the order of the day for Monday next.

The Senate took into consideration the motion made on the 16th instant, on the subject of issuing writs of habeas corpus in criminal cases; and the motion having been amended, was adopted, as follows:

Resolved, That a committee be appointed to inquire whether any further Legislative provision be necessary for regulating the manner of issuing and executing the writ of habeas corpus by the courts of the United States, and that the committee be empowered to report by bill or otherwise.

Ordered, That Messrs. GILES, ADAMS, ANDERSON, CRAWFORD, and BRADLEY, be the committee.

The bill, entitled "An act making appropriations for carrying into effect certain Indian treaties," was read the third time, and passed.

Mr. ANDERSON, from the committee to whom was referred the bill, entitled "An act extending the right of suffrage in the Indiana Territory," reported it without amendment; and the bill was ordered to the third reading.

Mr. ROBINSON, from the committee to whom was referred the bill, entitled "An act to allow the importation of old copper free of duty," reported an amendment; which was read, and ordered to lie for consideration.

FRIDAY, February 19.

Mr. TURNER, from the committee to whom was referred the bill, entitled "An act making additional compensation to the marshals for the districts of North Carolina and New Jersey," reported it without amendment.

Ordered, That this bill pass to the third reading.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of
Representatives of the United States:

The States of Pennsylvania, Maryland, and Virginia, having, by their several acts, consented that the road from Cumberland to the State of Ohio, authorized by the act of Congress of March 29th, 1806, should pass through those States, and the report of the Commissioners, communicated to Congress with my Message of January 31, 1807, having been duly considered, I have approved of the route therein proposed for the said road as far as Brownsville, with a single deviation since located, which carries it through Uniontown.

From thence, the course to the Ohio and the point within the legal limits at which it shall strike that river, is still to be decided. In forming this decision, I shall pay material regard to the interests and wishes of the populous parts of the State of Ohio, and to a future and convenient connexion with the road which is to lead from the Indian boundary near Cincinnati, by Vincennes, to the Mississippi at St. Louis, under authority of the act of April 21, 1806. In this way we may accomplish a continued and advantageous line of communication from the seat of the General Government to St. Louis, passing through several very interesting points of the Western country.

I have thought it advisable also to secure from obliteration the trace of the road so far as it has been approved, which has been executed at considerable expense, by opening one-half of its breadth through the whole length.

The report of the Commissioners, herewith transmitted, will give particular information of their proceedings under the act of March 29, 1806, since the date of my Message of January 31, 1807, and will enable Congress to adopt such further measures relative thereto as they may deem proper, under existing circumstances.

TH. JEFFERSON.

FEBRUARY 19, 1808.

The Message and papers were read, and ordered to lie for consideration.

The Senate took into consideration the bill, entitled "An act to allow the importation of old copper free of duty," together with the amendment reported by the committee; and the further consideration thereof was postponed until Monday next.

The bill, entitled "An act extending the right of suffrage in the Indiana Territory," was read the third time, and passed.

Mr. BRADLEY, from the committee to whom was referred the bill, entitled 'An act for the relief of Samuel Whiting," reported it without amendment; and the bill was ordered to the third reading.

The Senate took into consideration the amendments reported by the committee to whom was referred the bill to amend the act, entitled "An act establishing circuit courts, and abridging the jurisdiction of the district courts of the districts of Kentucky, Tennessee, and Ohio."

Ordered, That the bill and amendments be recommitted to the committee who had the bill last under consideration, further to consider and report thereon.

Mr. POPE communicated a resolution and instruction of the Legislature of the State of Kentucky to their Senators in Congress, on the expediency of opening a wagon road from Ohio river, to intersect the road leading from Cincinnati to Fort Wayne; which was read, and referred to Messrs. POPE, THRUSTON, and BRADLEY, to consider and report thereon, by bill or otherwise.

MONDAY, February 22.

Mr. MACLAY, agreeably to instructions from the Legislature of the State of Pennsylvania to their

Senators in Congress, submitted the following resolution:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the first section of the third article of the Constitution of the United States be so altered and amended "that the judges of the courts thereof shall hold their offices for a term of years; that they shall be removed by the President of the United States on the address of the majority of the members present, of the Senate and House of Representatives of the United States in Congress assembled; and that on all trials of impeachment for high crimes and misdemeanors, a majority of the Senate shall be competent to conviction."

And the resolution was read, and referred to Mr. TIFFIN and others, the committee appointed the 25th of January last, on this subject, to consider and report thereon.

The Senate resumed, as in Committee of the Whole, the second reading of the bill, entitled "An act making further provision for the disposal of the sections of land heretofore reserved for the future disposition of Congress," together with the amendment reported by the special committee; and the President having reported the bill amended, on the question, Shall the bill be read a third time as amended? it was determined in the affirmative.

Agreeably to the order of the day, the Senate resumed, as in Committee of the Whole, the second reading of the bill for the punishment of treason and other crimes and offences against the United States; and, after debate, the Senate adjourned.

Mr. SMITH, of Maryland, from the committee to whom was referred the bill, entitled "An act supplementary to the act, entitled 'An act to prohibit the importation of certain goods, wares, and merchandise," reported the bill with amendments; which were read, and ordered to lie for consideration.

DEATH OF HON. JOHN DICKINSON.

Mr. WHITE.—Mr. President: It is with much pain and regret, sir, that I rise to announce to the Senate the irreparable loss our country has sustained in the death of one of her worthiest citizens and most distinguished patriots. Time has measured and told the days of another venerable sage of the Revolution. JOHN DICKINSON, the illustrious cotemporary and friend of Washington and Franklin, is now no more—his head and his heart devoted to the service and love of his country, till his locks were bleached by the frosts of more than seventy winters, have now descended in silence to the grave. No humble eulogy of mine shall attempt to approach his exalted merit. The happiness of his fellow-citizens was his only aim, and upon the grateful hearts of his countrymen is indelibly engraven the dearest memento of his wisdom and his worth. Those who shared his personal acquaintance will never forget his private virtues—volumes from his pen, that do honor to the age, that will be read and admired as long as the love of science and freedom shall be cherished, record his inflexible patriotism; and the liberties of this country, which he contributed so essentially in establishing, will I hope long, very long indeed, sir, continue to be the proud and unshaken monument of his fame. The feelings of every gentleman of this honorable body will I am sure be in unison on the motion I am about to propose; it is an humble tribute of respect to the memory of the deceased, in the form of the following resolution:

Resolved, unanimously, That the Senate is penetrated with the full sense of the merit and patriotism of the late JOHN DICKINSON, Esq., deceased, and that the members thereof do wear crape on the left arm, for one month, in testimony of the national gratitude and reverence towards the memory of that illustrious patriot.

This resolution was immediately adopted.

TUESDAY, February 23.

Mr. GILMAN, from the committee to whom was referred the bill, entitled "An act for the relief of Edward Weld and Samuel Beebee," reported amendments; which were ordered to lie for consideration.

The Senate resumed, as in Committee of the Whole, the consideration of the amendments reported by the select committee to the bill, entitled "An act supplementary to an act, entitled 'An act to prohibit the importation of certain goods, wares, and merchandise," and the President having reported the bill to the House amended, it was ordered to the third reading as amended.

Mr. GREGG, from the committee, reported the amendments to the bill, entitled "An act making further provision for the disposal of the sections of land heretofore reserved for the future disposition of Congress," correctly engrossed. The said bill was then read the third time, and passed.

Agreeably to instruction from the Legislature of the State of Pensylvania to their Senators in Congress, Mr. MACLAY submitted the following resolution, which was read for consideration:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of each House agreeing thereto, That the Constitution of the United States be so altered and amended, as to prevent the Congress of the United States, and the Legislature of any State in the Union, from authorizing the importation of slaves.

The bill, entitled "An act for the relief of Samuel Whiting," was read the third time, and passed.

The bill, entitled "An act making additional compensation to the Marshals for the district of North Carolina and New Jersey," was read the third time, and passed.

On motion, by Mr. POPE, the bill for the punishment of treason and other crimes and offences against the United States, was postponed until to-morrow.

Mr. MITCHILL submitted the following motion for consideration:

Resolved, That a committee of three members of the Senate be appointed, who, with three members of the House of Representatives, to be appointed by the said House, shall have the application of the money appro-

priated by the "Act making further appropriation for the support of a library," passed the 21st February, 1806; and that the Secretary give information thereof to the House of Representatives.

Mr. GREGG, from the committee, reported the amendments to the bill, entitled "An act supplementary to the act, entitled 'An act to prohibit the importation of certain goods, wares, and merchandise," correctly engrossed. The bill was then read the third time as amended, by unanimous consent, and passed.

Mr. ADAMS, from the committee to whom was referred the "Resolution to authorize the disposition of certain charts of the coast of North Carolina," reported the same without amendment. And the bill was ordered to a third reading.

WEDNESDAY, February 24.

The Senate proceeded to consider the motion submitted yesterday; and

Resolved, That a committee of three members of the Senate be appointed, who, with three members of the House of Representatives, to be appointed by the said House, shall have the application of the money appropriated by the "Act making further appropriation for the support of a library," passed 21st February, 1806; amd that the Secretary give information thereof to the House of Representatives.

Ordered, That Messrs. MITCHILL, ADAMS, and GILES, be the committee on the part of the Senate.

The Senate resumed, as in Committee of the Whole, the amendments reported by the select committee to the bill, entitled "An act for the relief of Edmund Weld and Samuel Beebee;" and the President having reported the bill to the House amended,

Ordered, That it pass to the third reading as amended.

Mr. GREGG, from the committee, reported the resolution for the appointment of a joint committee on the arrangements for the library, correctly engrossed.

Mr. MILLEDGE, from the committee to whom was recommitted the bill, entitled "An act to incorporate the Trustees of the Baptist Church in the City of Washington," together with certain amendments proposed, reported further amendments; which were read, and ordered to lie for consideration.

Mr. POPE, from the committee to whom was referred, on the 26th of November last, the petition of William Wells, reported a bill granting William Wells the right of pre-emption;" which was read and passed to the second reading.

TREASON AND OTHER CRIMES.

The Senate resumed, as in Committee of the Whole, the second reading of the bill for the punishment of treason and other crimes and offences against the United States.

Mr. POPE moved that the further consideration of the bill be postponed until the first Monday in December next.

The PRESIDENT having put the question—

Mr. POPE said, that after the very able and ingenious argument of the honorable Chairman of the committee, (Mr. GILES,) who reported the bill, it was with very great reluctance and diffidence that he rose to offer his view of the question.

The bill, however, assumed a principle entirely new, and went to create offences which had been, he believed, heretofore unknown in the General Government, or any of the State governments. The importance as well as novelty of the subject, rendered a full discusssion of its merits necessary, before the House pronounced a final decision. A sense of duty, therefore, prompted him, feeling a conviction that the measure was unconstitutional and inexpedient, to express his sentiments on the subject.

Questions of this kind, said Mr. P., whatever may be their ultimate fate, answer one good purpose. They invite an examination of the first principles—they lead us to explore the foundation of our political fabric, and the boundaries which the people of these States have drawn around the powers of Congress. We should have constantly in view that the people are the fountain of all power, and when we are about to do any act, it is our duty to inquire whether we have received from that fountain any grant of power to authorize it. Before I proceed to investigate the merits of this bill, I must beg leave to strip this debate of one subject, with which it has been encumbered, and which I think ought not to have been introduced to play upon the question before us. I mean the judiciary, and the independence of judges. Many observations have been made on this subject, the relevancy of which I have not perceived; for, whether their independence be retained or diminished, I presume their judicial functions will not be altered. The orbit in which the Constitution has destined the judiciary to move will remain the same.

On the subject of the independence of the judiciary, I have never indulged much theoretic speculation. My impressions are rather the result of education and habit, than of a thorough examination of the principles on which they are predicated. After the declaration of American Independence, the people of the several States, in forming their constitutions, introduced this principle of an independent judiciary; and at the time the Federal Constitution was adopted, it appears to have been a favorite one with all parties. For my part, I have considered the Constitution defective in not providing for the removal of judges by address, for any reasonable cause which does not constitute matter of impeachment. The American people have incorporated into their system of Government such features of the British Government as were supposed to favor the liberty of the subject.

It seems to have been supposed at the time this subject was before the nation, to be necessary to interpose some barrier to protect the rights of the minority against the persecuting spirit of an overbearing majority, and to secure an accused individual against oppression and injustice from the strong arm of power. The independence of the Federal Judiciary was deemed a valuable safe-

guard against the encroachments of the Federal Government on the rights of the people, and the sovereignty of the States. The value and importance of this principle here was probably estimated in a great measure by its supposed effects in the British Government. To protect the weak against the strong, to secure to every man, whatever may be his condition, equal and impartial justice, is certainly the legitimate end of every government. To accomplish this great object, it seems to have been thought necessary to give our judicial tribunals such a degree of independence as would enable them to administer justice to all without respect to persons uninfluenced or overawed by any power or party in the Government. Whether this principle is correct in the full extent to which it has been carried by our Constitution, it would be perhaps premature for me now to decide, inasmuch as we have reason to expect that the question will be presented to us in a distinct and independent form. I shall regret to see our judges the tools of an administration, or associated with an opposition for the purpose of embarrassing it. Whenever a judge profanes the temple of justice by acting the part of the political partisan, he ought to be execrated by every honest man in the nation.

I shall rest here on the present occasion, laying entirely out of view the independence of the judiciary, and will proceed to inquire whether we have the power to legislate as proposed by the bill. The House will please to mark the essential difference between the constitutions of the several States and the Constitution of the United States. The former are limitations of power; the latter a special grant of power. The Legislatures of the several States have all power not expressly prohibited. The Congress of the United States has no power but what is expressly given. But while I notice this distinction, let it not be understood that I am opposed to fair and liberal construction.

It will not be amiss to retrospect the state of things before the Federal Constitution was adopted. The States were united by a compact purely federal—the old Congress had no authority to enforce their laws or ordinances by acting upon the people individually. Its acts were binding on the States, and depended on their agency to carry them into effect. This form of Government was found by experience to be inefficient, and the present Constitution was presented to the view of the American people. This is partly federal, partly national. It authorizes Congress to carry their powers into effect by an agency on the people; and it will be recollected that of this national consolidating feature the people were most jealous, and against it the opposition was principally directed. It was apprehended that this Government would accumulate powers by implication, until it would swallow up the State governments in one great consolidated empire. It will be recollected that before the present Constitution was adopted, the States respectively had power to punish all crimes committed within their respective jurisdictions; and all powers not granted to this Government having been reserved to the States and the people, it follows that all crimes are cognizable by the States, except such as are specified in the Federal Constitution.

In the enumeration of powers granted to Congress the Constitution contains the following provision: "To constitute tribunals inferior to the 'Supreme Court; to define and punish piracies 'and felonies committed on the high seas, and of-'fences against the law of nations." Here a power is expressly given both to define and punish; but when the Constitution speaks of the crime of treason a very different phraseology is made use of. It seems to have been deemed necessary to give Congress a power to punish treason, but the framers of our Constitution, warned by the history of other nations of the abuses and oppressions which had been committed in prosecutions for this offence, that treasons had been the great engine by which violent parties in free Governments had borne down each other, deemed it of importance to the liberties of the people to oppose a barrier to this danger by inserting in the Constitution a definition of the crime. This definition is as follows: "Treason against the United States shall 'consist only in levying war against them, or in 'adhering to their enemies, giving them aid and 'comfort." This definition was considered clear, precise, and determinate, and certainly intended to be as fixed and immutable as the Constitution itself. The Constitution then proceeds: "No per-'son shall be convicted of treason unless on the 'testimony of two witnesses to the same overt act, 'or on confession in open court." "The Congress 'shall have power to declare the punishment of 'treason, but no attainder of treason shall work 'corruption of blood or forfeiture, except during the 'life of the person attainted." The Constitution has not only provided a barrier against legislative tyranny, but, by fixing the proof necessary for conviction, has furnished innocence a great security against that odious class of beings, so common in despotic Governments, called spies and informers.

The last clause I have read merits particular notice. It gives to Congress power to declare the punishment of treason, but none to define it. In the clause respecting piracies and felonies a power is expressly given both to define and punish. These several parts of the Constitution which I have read seem by necessary implication to negative the power of Congress to define this crime. It is certainly our sacred duty to expound this instrument according to the will of those who framed it, as far as that will can be fairly collected; whether, then, the exposition I have given is vested by the Constitution itself or by the sense of the American people after it was framed, and before it was finally ratified, the result will be the same. It is well known that the work called the Federalist was written by several members of the Convention that framed this Constitution; in one of the numbers comprised in that work the same construction is given to this clause for which I contend; and the author assigns the reasons why power is given to Congress to define piracies, &c., and none to define treason. This exposition of

the clause respecting treason is also maintained by Colonel George Nicholas and Mr. Edmund Randolph, in their speeches in the Virginia Convention, and Mr. Randolph, it will be recollected, was a member of the convention which framed this Constitution. Still further to corroborate the opinion I have advanced, I will beg leave to read the observations of Judge Wilson on this subject, in one of his lectures to his students. I rely much on the opinion of Judge Wilson; he was also a member of the Convention, a man of eminent talents, and if his judgment was under any bias, it was rather in favor of increasing than diminishing the powers of the Federal Government. He expresses himself as follows:

"Treason is unquestionably a crime most dangerous to the society and most repugnant to the first principles of the social compact. It must however be observed that as the crime itself is dangerous and hostile to the State, so the imputation of it has been and may be dangerous and oppressive to the citizens. To the freest Governments this observation is by no means inapplicable, as might be shown at large by a deduction, historical and political, which would be both interesting and instructive; but at present we have not time for it.

"To secure the State and at the same time to secure the citizens; and according to our principles, the last is the end and the first is the means, the law of treason should possess the two following qualities: 1st. It should be determinate. 2d. It should be stable."

After reciting the observations of the celebrated Montesquieu on the crime of treason, he proceeds:

"In point of precision and accuracy, with regard to this crime, the common law, it must be owned, was grossly deficient. Its description was uncertain and ambiguous; and its denomination and penalties were wastefully communicated to offences of a different and inferior kind. To lop off these numerous and dangerous excrescences, and to reduce the law on this important subject to a designated and convenient form, the famous statute of treasons was made in the reign of Edward the Third, on the application of the Lords and Commons. This statute has been in England, except during times remarkably tyrannical or turbulent, the governing rule with regard to treasons ever since. Like a rock, strong by nature and fortified as successive occasions required, by the able and the honest assistance of art, it has been impregnable by all the rude and boisterous assaults which have been made upon it at different quarters, by ministers and by judges; and as an object of national security, as well as of national pride, it may be styled the legal Gibraltar of England."

In a subsequent part of the same lecture he observes:

"This statute was a safeguard from the arbitrary constructions of courts. It was a shelter from judicial storms, but it was no security against legislative tempests. No Parliament, however omnipotent, could bind its successors, possessed of equal omnipotence; and no power higher than the power of Parliament was then or is yet recognised in the judicial system of England. What was the consequence? In the furious and sanguinary reign of Henry the Eighth, the malignant spirit of inventing treasons revived, and was carried to such a height of mad extravagance, that, as we have seen on another occasion, the learned as well as the unlearned, the cautious as well as the unwary, the honest as well as the vicious, were entrapped in the snares. Admonished by the history of such times and transactions as these, when legislators were tyrants or tools of tyrants, the people of the United States have wisely and humanely ordained that treason against the United States shall consist, &c. In this manner the citizens of the Union are secured effectually from even legislative tyranny; and in this instance, as in many others, the happiest and most approved example of other times has not only been imitated, but excelled. This single sentence comprehends our whole of national treasons and, as I mentioned before, is transcribed from the statute of Edward the Third."

In addition to the opinions which I have cited, I will beg leave to add that of Judge Tucker, whose learning, ability, and political sentiments, entitle it to very high respect. It will be recollected, also, that the attention of the American people was particularly awakened to an examination of this Constitution after it was framed, and before it was ratified. During that period, every section, clause, and line, was strictly scrutinized, and I believe in no instance did the Constitution receive the construction now contended for. Before the statute of Edward the Third, the judges had great latitude of discretion in defining treason, and, being tools of the Crown, the subjects were harassed and oppressed to such a degree that the Lords and Commons procured this famous statute of treasons to be passed, in order to render this crime so definite and certain that people could understand it, and to abridge the arbitrary discretion of the judges. We are, therefore, compelled to believe that the wisdom of that Parliament was exerted to make as clear and precise a definition of this crime as the English language would enable them. This definition of this species of treason which consists in levying war, stood the test of nearly six hundred years' experience without amendment. If the English courts have in any instances departed from this definition, we must attribute it to the violence of the times in which the decisions were given, rather than to any defect in the law. The experience of the world has proved that in all countries the tone of public feeling will in some degree influence all the operations of Government, and hence it appears, that when a nation is agitated by danger from foreign or domestic enemies, the laws are executed with more rigor than in a time of perfect tranquillity. Although we have reason to felicitate ourselves that we are exempt from the great evils and oppressions incident to despotic Governments, yet I fear that party spirit, when it runs high, will not only influence the general course of our political affairs, but too often tinge the decisions of our judicial tribunals. I believe, however, that the evils felt in Great Britain from prosecutions for this crime were produced by the unprincipled pliability of Parliament in manufacturing new and artificial treasons, during the reigns of tyrannical princes, and especially that of the celebrated monster Henry the Eighth, than to any other cause. If any shades of difference are to be found in the decisions of our own courts, or any contrariety of opinion among learned men on the subject of treason, it is rather to be attributed to the prevalence

of party spirit or contrariety of intellect, than to any real defect in the Constitutional definition of the crime. This Constitution was framed but a few years after the close of our glorious Revolution, when the feelings and prejudices of the American people were very strong against everything British. Strange, then, that those who drafted this instrument, in their zeal to guard the people from oppression, should have borrowed from a British statute a definition which experience had proved to be defective. Let it be remembered, too, that the Convention who framed it was composed of some of the first statesmen and patriots that ever adorned any age or nation, and we must presume that if they could have devised a better definition, they would certainly have done it. My opinion is, that every definition of crime should be concise, and that confusion and uncertainty is generally increased by amplification. If, however, all America has hitherto misunderstood this clause in the Constitution, and we have a power to legislate on the subject, and it is expedient to do so, I will cheerfully lend my feeble aid to remedy the evils which are supposed by the committee to exist.

Permit me, however, first to examine the ground on which this power is claimed. The honorable Chairman (Mr. GILES) has told us that our right to declare what act or acts shall amount to a levying of war is derived from that clause in the Constitution which gives Congress power to make all laws which shall be necessary and proper, for carrying into execution the powers previously granted, and all other powers vested by the Constitution in the Government of the United States, or in any department or office thereof. This is carrying the doctrine of implication much further than has ever been contended for. I have never understood this clause as containing any separate and independant grant of power, but as auxiliary merely. Before we can bottom any measure on this clause, it is necessary to connect it with some power granted to or vested in this Government. We cannot surely imply a power to amend defects in the Constitution, and yet the course of reasoning of the honorable Chairman, however plausible and ingenious, if it proves anything, tends to prove that such a power is implied, and inasmuch as treason is not sufficiently defined by the Constitution, Congress has a right to define it, or, which I consider the same thing, to explain the term levying war. If the Constitution is defective, it belongs to the people, not to Congress, to provide a remedy. It is our duty to exercise power granted, and not to assume what we may deem necessary for the general welfare. It ought to be remembered that the people have already been alarmed by this doctrine of implication. The tocsin has been sounded, and they have, at least by implication, evinced their hostility to this latitude of the construction. I presume gentlemen will not pretend to derive a power to pass this bill from the supposed expediency of the measure. I recollect to have heard some years ago a sentiment expressed by some character of high standing, whose name I have forgotten, that constitutionality and expediency were convertible terms, very much censured. It is very dangerous to indulge this doctrine of expediency at the expense of the fundamental principles of our Government.

The plea of expediency is too often resorted to, to justify the greatest outrages. It was on the broad and indefinite ground of expediency that Great Britain seized on the fleet of Denmark, and that the great belligerents of Europe have prostrated the maritime rights of neutral nations. This plea of expediency, when at war with the sacred principles of our Government ought never to be excused or palliated, but in extreme cases, in times of great public danger. At a moment when a Government is agitated and convulsed, when its very existence is at stake, I should perhaps be as little pleased with the squeamish politician who would be stickling for Constitutional niceties, but rather be disposed to admire the bold statesman, who would step forth and use the means necessary to dissipate the impending storm. A state of things is possible in all Governments, when all the general rules and maxims established for the security of liberty must bend to the supreme law, the safety of the nation. Our Constitution has anticipated such a state. But such is not now our situation, we are not legislating for a moment or to meet a particular emergency; we are passing a general permanent law, by which the conduct and trials of our citizens are to be regulated.

The honorable Chairman made some observations about cabalistic words, by which he supposes some may have been misled, the drift of which I confess I did not comprehend. I presume that the framers of our Constitution would not have used any but appropriate words and phrases. Much has been said about common law and English books, calculated more to prejudice than convince. To ascertain the meaning of any legal or technical phrases we resort to English law books, as we do to an English dictionary and English writers, to ascertain the meaning of any English word or phrase. The reports of the decisions of our own courts will gradually supersede the use of British authorities.

The honorable Chairman emphatically asks, what is levying war? And I might in turn inquire what is war, and where do we find the meaning of the term or word? The Constitution says, we shall have power to declare war. To ascertain what constitutes war we must resort to different writers on the subject. War may be waged between nations in many different ways. It might take a volume to explain the different warlike attitudes which nations may assume towards each other, and a man may be guilty of levying war in various ways. Levying war is the act or fact which constitutes the crime of treason, as the killing a man with malice prepense is the act which constitutes the crime of murder. The levying of war is a complicated operation, which may be composed of many subordinate facts, it is the principal fact or result which must be proved or produced by the evidence, before a court and jury can convict a man of treason, as

killing a man with malice prepense is the principal fact or result which must arise out of the evidence before a man can be convicted of murder. If a man at the head of fifty thousand, ten thousand, one hundred thousand, or five hundred men should seize on the city of New Orleans, in defiance of the authority of the United States, all men would consider it a levying of war; in a case of this kind there would be but one opinion. But if only two or three men were to assemble armed with intent forcibly to overturn the Government of the United States, I presume no man would call this a levying war, the idea would be ridiculed by the whole nation. The great difficulty is in fixing the line of partition between those acts which amount to levying war and those which do not, but nearly approach it. Crimes of different species are often separated by such delicate shades as to render it difficult to distinguish them; some slight difference is discernible between the opinions of different judges and writers who have undertaken to draw the line of distinction between murder and manslaughter; and in the application of any definition of crime to the variety of cases which happen, a difference of opinion frequently occurs between the most profound judges. Neither human wisdom nor human language is competent to define crimes with such certainty and precision as will prevent contrariety of opinion in many equivocal cases which will arise. This perfect uniformity, which gentlemen seem to be in pursuit of, is unattainable; the attempts of the honorable committee, however laudable, appear to me extremely visionary. In order to guard entirely against this contrariety of opinion, of which gentlemen complain, some scheme must be devised for producing an uniformity of intellect, and compelling all men to view subjects through one common medium; something must be trusted to the good sense of the courts and juries; some confidence must from necessity be reposed. Although the wisdom of this nation was exerted to draw with precision the line of demarcation between the powers of the Federal and the State Governments, yet have we been differing about it ever since. There are many acts which all agree we have power to do, and there are many others which all agree we are not authorized to do; but questions frequently occur, about which there is great contrariety of opinion, and which must be settled by the good sense of those who have to decide them. These inconveniences which grow out of the operations of our Government were foreseen, they result from the imperfection of all human institutions. How often does it happen that the highest offender against our laws eludes the stroke of justice, by the error of the judge, the jury, or the application of those rules and maxims which have been established for the security of liberty! It was expected by the framers of our Constitution that those bulwarks which they reared for the protection of innocence, would often afford impunity to the guilty. All our republican institutions are bottomed upon the humane principle that it is better that many guilty persons should escape than one innocent man should suffer. Shall we, because some partial inconveniences have been experienced, prostrate the sacred barriers fixed by the Constitution? No, sir. The wise statesman, the friend to freedom and human happiness, will reconcile himself to the lesser evil.

It is, sir, an invincible objection to this bill, that it violates that political axiom in the science of free Governments, that the Legislative, Judicial, and Executive departments ought to be separate and distinct. It has been hitherto deemed wise to separate the power of interpreting laws from the Legislative and Executive powers. This maxim pervades all the Governments of the Union as well as the Constitution under which we are assembled. It is a principle for which the greatest statesmen who have figured on the American theatre, and especially those most famed for their attachment to liberty, have professed a sacred regard. If this maxim be recognised, it is a question worthy of consideration, whether the first section of this bill, which goes to explain the Constitutional definition of treason, be in its nature a legislative or a judicial act. That Congress, as well as every legislative body, has a power to add explanatory sections to any law within its power to alter or repeal, I will not deny; but I contend with great confidence that Congress has no power to expound the Constitution or any law which they cannot repeal, to govern any other department of the Government. Can Congress give a construction to a treaty to govern our judicial courts? Surely such a power was never contended for.

By the compact between Virginia and Kentucky, when the latter became an independent State, it was stipulated that all titles to land derived from the State of Virginia should be decided by the laws of that State then in force. Great uncertainty and confusion attended the construction of that law in the courts of Kentucky. But I presume it would hardly be contended that the Legislature of Kentucky could remedy the evil by a Legislative explanation of the law. And why? Because it is a law over which it has no control. The Executive and Judiciary derive their powers partly from the Constitution and partly from the acts of Congress. Can it be pretended that Congress has power, by a Legislative interpretation, to direct or control either the Executive or Judiciary in the exercise of powers derived from the Constitution? Certainly not. Each department, within its own sphere of action, must judge of the Constitution for itself.

The people have, by the Constitution, enacted the declaratory part of the law of treason by defining it, giving to Congress power to add the vindicatory part by declaring the punishment; these combined constitute the law of treason, by which every man accused must be tried, the interpretation and application of which belongs not to Congress, but to courts and juries. By the first and second sections of the bill we are not only assuming the exercise of judicial powers, but we are abridging the rights of juries. Before any man can be convicted of treason, he must be found

guilty by a jury of his peers of the act of levying war; and whether levying war is considered a fact or compounded of law and fact, it is equally the province of the jury to decide it, whatever may be the opinion of the court. What are we attempting to do by this bill? Why, sir, we are undertaking to specify what acts shall amount to the fact or act of levying war, or, rather, declaring what evidence shall be sufficient to convict a man of the crime. A very strange opinion has been advanced by an honorable member of the committee, from Massachusetts, (Mr. ADAMS.) He contends that we have a right to give our opinion or exposition of this clause of the Constitution, but that courts and juries will not be bound by it, if they should think differently. If this bill, when passed, will not be obligatory, it proves that we have no power to pass it. The Constitution declares that the Constitution itself, and all laws passed in pursuance thereof, shall be the supreme law of the land. According to the opinion of the gentleman from Massachusetts, we might have Judicial construction, Legislative construction, and Executive construction, conflicting with each other. This would be a state of confusion and collision which could never have been intended by the wise framers of our happy Constitution.

The honorable Chairman has, however, controverted this right of the courts to disregard our explanation. I am not disposed, on the present occasion, to discuss at large the question whether the judicial courts can disregard an act of the Legislature which they may deem unconstitutional. I am not an advocate for the power of the Judiciary to declare an act of Congress unconstitutional, in the latitude in which the proposition is generally stated. I presume that it cannot be pretended that the judges are authorized to erect themselves into a board of censors, and *ex mero motu* by a written declaration to nullify an act of the Legislature. But if a question of which they have cognizance is brought before them for adjudication, in a course of legal proceeding touching the life, liberty, or property of an individual or individuals, in deciding which it becomes necessary to disregard the Constitution or an act of Congress, they must give effect to the Constitution, which is the supreme law, flowing immediately from the sovereign power, the people, rather than to the act of a subordinate authority. Every department within its sphere must judge for itself of the Constitution, and is bound to support it. The exercise of this negative power by the courts results from necessity in the discharge of their judicial functions. A court of justice ought to decide every case according to right, whether that right be deduced from an act of Congress or the Constitution. I believe it was generally understood, when this Constitution was adopted, that the Judiciary would, when necessary and proper, exercise this negative power.

The different departments were expected to check and restrain each other from exceeding the proper limits. This negative power for which I have contended has, I believe, been exercised by the courts of the United States and of most of the States, ever since the commencement of the Government, without producing any serious inconveniences. Legislatures have in some instances inadvertently violated the Constitution. I cannot, however, perceive the necessity of stirring or deciding this question at present. If we believe that the Constitution authorizes the passage of this bill, we ought to presume that the judges will entertain the same opinion. The Legislature should not, without apparent necessity, bring itself into collision with any other department of the Government. A state of hostility between the different departments is very much to be deplored. I consider this instability with regard to fundamental principles extremely unfortunate. It is essential to the happiness of every people, and the permanency of every Government, to have them fixed and settled by a constitution or habit. Great leading principles, when once established and understood, serve as landmarks to direct those entrusted with the administration of the Government, and to warn the people when their important rights are assailed.

One observation has been made in favor of this bill rather specious, but entirely destitute of solidity. We are told that it is necessary to amend the definition of treason to enable the people to understand it. I presume no amendment or explanation is necessary for the honest part of the community. By the law of treason, as it now exists, every man is punishable who is guilty of levying war, in whatever manner it may be done; but if we specify the particular acts, and declare that those only shall constitute the crime, we thereby enable the villain with more certainty to defy public justice.

There is one consideration which ought to impress itself on the mind of every member of this body. If we assume the power of specifying what acts shall amount to a levying of war, every future Legislature can exercise the same power; and hence it will follow that treason, instead of being fixed and immutable by the Constitution, will always depend on the arbitrary opinion of the party that happens to predominate in the Government. Sir, this barrier of the Constitution must not be broken down. This once passed and we are afloat on a boundless ocean, without anything to guide or restrain us but our own will, whim, and caprice.

I will now call the attention of the Senate to another prominent feature in this bill. The section concerning conspiracy. It is in the following words:

"SEC. 3d. *And be it further enacted*, That if any persons shall conspire together with intent to commit any one or more of the acts which, if committed, would amount to treason against the United States, according to the two first sections of this act, every person so offending, upon being thereof convicted, shall be adjudged guilty of a conspiracy to commit treason against the United States, and shall be punished by fine not exceeding —— dollars, and by imprisonment and hard labor for a term not exceeding —— years, nor less than —— years."

The Senate will please to recollect the position which I have already laid down, that those crimes which are common to all governments, or rather which are not peculiar to nor result from the particular policy or measures of the Federal Government, were punishable by the States respectively before the present Constitution was adopted, and that Congress has no cognizance of any of this description, except such as are specially made so by the Constitution. Conspiracy, murder, &c., are crimes common to all governments, and consequently are not punishable by this Government, unless committed by persons upon whom its jurisdiction has attached in the course of its legitimate operations. Conspiracy is an offence no where mentioned in the Constitution. It may be said that many offences are contained in our penal code not specified in the Constitution: To this I reply that most of those offences are what may be termed *mala prohibita*, and have been created as necessary auxiliaries to the execution of powers delegated. This Constitution being a special grant of power, those acting under its authority cannot claim the exercise of any power not delegated or vested in them, except such incidental powers as may be requisite to carry the specified powers into effect or result from the exercise of them. The power to punish conspiracy cannot be included with the class of incidental or resulting powers.

This clause may be fairly objected to, as unconstitutional, on another ground. The offence created by it savors very much of that species of treason known in despotic governments, which is committed by imagining the death of the royal person or conspiring against his life. This section is intended, if I understand it, to punish an intent to commit treason. If it is improper to violate the Constitution directly, it is equally so to do it indirectly. I infer that the people of the United States, by declaring that treason should consist only in levying war, &c., intended to proscribe every other species of it; and it may be questioned whether we can with propriety introduce another species of treason into our penal code under the name of conspiracy. Besides it will violate that provision which requires two witnesses to an overt act; for if this clause is retained and the bill passes, I presume a single witness proving an intent to commit treason will be sufficient for conviction. A few fugitive expressions which may escape men in a moment of boasting dissipation, if related on oath in a court of justice by a pimping informer, may be competent to destroy them. In governments founded on force, the despot, conscious that he has no place in the affections of his subjects and consequently jealous of their fidelity, has his secret spies and informers to watch their most minute transactions. Every whisper alarms him. In such governments many, who have been ornaments of human nature, have been sacrificed by the instrumentality of informers, at the shrine of individual malice, or to suit the convenience of ministry. The witness who swears to another's private intentions, unconnected with any open deed, can perjure himself with impunity; the accused has no means of controverting the fact, the armor of conscious innocence cannot save him from ruin. In this Government, which is founded on the affections and interest of the great majority of the people, that jealousy so common in those governments ought not to be indulged. This strict scrutiny into the conduct of individuals is unnecessary here, and tends very much to diminish the stock of private confidence and social felicity. This crime called conspiracy, however odious, is in its nature so vague and indefinite, and liable to be proved by testimony of so suspicious a character, that I fear it would be dangerous to give it a place in our criminal code. Conspirators, when their guilt is well ascertained, will generally be punished with sufficient severity by that great censor, public opinion. It does not appear to be entirely congenial with either the genius or practice of the American Government to punish a man for his wicked intentions, until they have eventuated in the perpetration of some unlawful act.

I will now pass to the last section of the bill, which seems to merit some notice. It is in these words: "*And be it further enacted*, That if any 'person or persons shall attempt, by written or 'printed publications, or by advisedly speaking to 'or addressing an assemblage of people exceeding '—— persons, to promote and bring about a dis-'memberment of the United States or any of the 'territories thereof, or to erect or establish any 'government within the jurisdiction and against 'the authority of the United States, the person 'so offending," &c. This section is liable, independent of others, to the Constitutional objection made to that concerning conspiracy; and I am satisfied that the committee themselves, upon a reconsideration, will be convinced that it is highly impolitic.

When I first read it, I was reminded of a story I have some where read, that a man, whose inclination had never prompted him to go beyond the gates of Rome, sickened and died, when the Emperor issued an edict directing him to be confined within those very limits which he had never wished to pass. The moment we say to the people they shall not speak, we prompt them to throw off the authority of this Government. No man censures more highly than myself the circulation of opinions of this kind, but I believe the censure which awaits the authors of them at the bar of public opinion, is an adequate check. If there are any who entertain such sentiments, let them stand as monuments of the safety with which error of opinion may be tolerated, while reason is left free to combat it. If it should ever be found politic and necessary to suppress publications of this kind, it would be better for the States to legislate on the subject than this Government. An act passed by a State would have more effect upon the conduct of its own citizens than one passed by the General Government. This will be denounced as another sedition law, as violating the freedom of speech and the press; and, without answering any good purpose, may in its con-

quences do much mischief. I confess I have very little faith in the efficacy of penal laws on the durability of the Union. By the passage of this bill, instead of suppressing the evil, we shall only put a weapon into the hands of its enemies. We had better repose on the affections and attachment of the people to the Government, than attempt to operate upon them by penal sanctions. This Union must be preserved by the tie of common interests or force. It is an objection to this bill that it is calculated to increase the jurisdiction of the federal courts. I would prefer to have it diminished. This federal judiciary is, to the people I represent, the most odious feature in the Government. It has been already very inconvenient and oppressive to them, and would have been much more so but for some late decisions of the Supreme Court of the United States. These decisions have very much lessened the evil. Certain circumstances which have transpired within the last two years awakened my attention to the subject of union, and the general course of policy, in the internal administration of our Government, which ought to be pursued to preserve it. My reflections have convinced me that we must, as far as the Constitution will authorize, restrain the consolidating principle. This Government should interfere as little as possible with the interior of the States. To them must be left the cognizance of such offences of an inferior grade as may require the corrective hand of Government. This Government must act on a more elevated theatre. Its attention must be directed principally to national objects. If it is necessary to give it more energy, it must be done, not by increasing its agency in the interior, but by giving it a physical force, which will enable it to hold the vulnerable points and command the greater exterior of this extensive country. If the national consolidating principle is kept within its proper limits, and the federative character of the Government retained, I cannot foresee either the necessity or expediency of a severance of the States, although our population should expand to where the Missouri hides its head in the Rocky Mountains. The State governments are not only necessary rallying points against usurpation, but I believe the freedom and happiness of the people require that they should have, as exclusively as the nature of our Government can possibly permit, the control of their own citizens and the administration of their internal concerns.

While I applaud the motives which dictated this measure, and feel with the honorable committee an ardent solicitude to punish traitors, and check the spirit of disunion, they must pardon me for believing that, in their patriotic zeal to promote the public good, they have mistaken the extent of our powers as well as the means of attaining the object they have in view.

THURSDAY, December 25.

Mr. GREGG, from the committee, reported the amendments to the bill, entitled "An act for the relief of Edward Weld and Samuel Beebee," correctly engrossed. The bill was read the third time, and passed.

The "resolution to authorize the disposition of certain charts of the coast of North Carolina," was read the third time, and concurred in.

On motion, by Mr. ANDERSON, it was agreed that the bill for the punishment of treason, and other crimes and offences against the United States, be postponed until to-morrow.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for extending the terms of credit on revenue bonds in certain cases, and for other purposes; also, a bill, entitled "An act making appropriations for the support of the military establishment of the United States for the year 1808;" in which bills they request the concurrence of the Senate.

The Senate resumed, as in Committee of the Whole, the consideration of the amendments reported by the select committee to the bill, entitled "An act to allow the importation of old copper free of duty;" and the PRESIDENT having reported the bill to the House amended, it was ordered to the third reading as amended.

The bill granting William Wells the right of pre-emption was read the second time. On the question, Shall this bill be engrossed and read the third time? it was determined in the affirmative.

The two bills last brought up for concurrence were read, and ordered to the second reading.

The Senate resumed, as in Committee of the Whole, the amendments to the bill, entitled "An act to incorporate the Trustees of the Baptist Church in the City of Washington;" and after progress, on motion, by Mr. BRADLEY, the further consideration of the bill was postponed until to-morrow.

Mr. POPE, from the committee to whom was referred, on the 19th instant, the resolution of the Legislature of the State of Kentucky on the subject, reported a bill for opening a road in the Indiana Territory; which was read, and ordered to the second reading.

FRIDAY, February 26.

The following Message was received from the President of the United States:

To the Senate and House of Representatives of the United States:

I enclose, for the information of Congress, letters recently received from our Ministers at Paris and London, communicating their representations against the late decrees and orders of France and Great Britain, heretofore transmitted to Congress. These documents will contribute to the information of Congress, as to the dispositions of those Powers, and the probable course of their proceedings towards neutrals, and will doubtless have their due influence in adapting the measures of the Legislature to the actual crisis.

Although nothing forbids the general matter of these letters from being spoken of without reserve, yet, as the publication of papers of this description would restrain injuriously the freedom of our foreign correspondence, they are communicated so far confidentially, and

with a request that, after being read, to the satisfaction of both Houses, they may be returned.

TH. JEFFERSON.

FEBRUARY 26, 1808.

The Message and papers accompanying it were read.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

The dangers to our country, arising from the contests of other nations, and the urgency of making preparation for whatever events might affect our relations with them, have been intimated in preceding messages to Congress. To secure ourselves by due precautions, an augmentation of our military force, as well regular as of volunteer militia, seems to be expedient. The precise extent of that augmentation cannot as yet be satisfactorily suggested; but that no time may be lost, and especially at a season deemed favorable to the object, I submit to the wisdom of the Legislature whether they will authorize a commencement of this precautionary work, by a present provision for raising and organizing some additional force, reserving to themselves to decide its ultimate extent on such views of our situation as I may be enabled to present at a future day of the session.

If an increase of force be now approved, I submit to their consideration the outlines of a plan proposed in the enclosed letter from the Secretary of War.

I recommend, also, to the attention of Congress, the term at which the act of April 18, 1806, concerning the militia, will expire, and the effect of that expiration.

TH. JEFFERSON.

FEBRUARY 25, 1808.

The Message and papers therein mentioned were read, and referred to Messrs. GILES, SUMTER, SMITH of Maryland, BRADLEY, and ADAMS, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House of Representatives concur in the resolution of the Senate for the appointment of a joint committee on the arrangements for the library, and have appointed a committee on their part.

Mr. GREGG, from the committee, reported the amendments to the bill, entitled "An act to allow the importation of old copper free of duty," correctly engrossed. The bill was read the third time; and the title having been amended, by adding, after "copper," "saltpetre and sulphur,"

Resolved, That this bill pass with amendments.

Mr. GREGG, from the committee, reported the bill granting William Wells the right of preemption, correctly engrossed. The bill was read the third time; and the blank being filled with the words "six hundred and forty," it was passed.

The bill, entitled "An act making appropriations for the support of the Military Establishment of the United States for the year 1808," was read the second time, and referred to Messrs. ANDERSON, BAILEY, and FRANKLIN, to consider and report thereon.

The bill, entitled "An act for extending the terms of credit on revenue bonds in certain cases, and for other purposes," was read the second time and referred to Messrs. MITCHILL, SMITH of Maryland, and ADAMS, to consider and report thereon.

The bill for opening a road in the Indiana Territory was read the second time, and ordered to lie for consideration.

MONDAY, February 29.

Mr. ANDERSON, from the committee to whom was referred the bill, entitled "An act making appropriations for the support of the Military Establishment of the United States for the year 1808," reported it without amendment, and the bill was ordered to the third reading.

Mr. MITCHILL, from the committee to whom was referred the bill, entitled "An act for extending the terms of credit on revenue bonds, in certain cases, and for other purposes," reported the bill without amendment.

The Senate resumed the second reading of a bill for opening a road in the Indiana Territory; and, after debate, the further consideration of the bill was postponed.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for procuring an additional number of arms; also, a bill, entitled "An act remitting the duties payable on the importation of a monument to be erected in memory of the officers of the United States Navy, who fell during the attack made on the city of Tripoli, in the year 1804;" in which they request the concurrence of the Senate.

The bills were read, and ordered to the second reading.

Mr. GILES, from the committee to whom was referred, on the 26th instant, the Message of the President of the United States, of that date, on the subject, reported, in part, a bill authorizing the President of the United States to raise an additional military force; which was read, and ordered to the second reading.

On motion, by Mr. SMITH, of Maryland, it was agreed, by unanimous consent, that the bill, entitled "An act remitting the duties payable on the importation of a monument to be erected in memory of the officers of the United States Navy, who fell during the attack made on the city of Tripoli, in the year 1804," be now read the second time.

Ordered, That it be referred to Messrs. SMITH of Maryland, KITCHEL, and FRANKLIN, to consider and report thereon.

On motion, by Mr. ANDERSON, it was agreed that the bill for the punishment of treason and other crimes and offences against the United States, be postponed until to-morrow.

On motion, by Mr. BRADLEY, it was agreed that the bill, entitled "An act to incorporate the Trustees of the Baptist Church, in the City of Washington," be postponed until to-morrow.

TUESDAY, March 1.

The bill authorizing the President of the United States to raise an additional military force, was read the second time.

The bill, entitled "An act for procuring an additional number of arms," was read the second time, and referred to Messrs. SMITH of Maryland, BRADLEY, and SUMTER, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act in addition to the act, entitled 'An act supplementary to the act, entitled An act laying an embargo on all ships and vessels in the ports and harbors of the United States,'" in which they request the concurrence of the Senate.

The bill last brought up for concurrence was read, and ordered to the second reading.

The Senate resumed, as in Committee of the Whole, the second reading of the bill for the punishment of treason and other crimes and offences against the United States; and, after debate, the further consideration of the bill was postponed until Thursday next.

The bill, entitled "An act making appropriations for the support of the Military Establishment of the United States, for the year 1808," was read the third time.

Resolved, That the Senate concur in this bill.

The bill, entitled "An act for extending the terms of credit on revenue bonds, in certain cases, and for other purposes;" was read the third time.

Resolved, That the Senate concur in this bill.

Agreeably to the order of the day, the Senate resumed the consideration of the resolution reported by the select committee for the expulsion of JOHN SMITH, a Senator from the State of Ohio.

Mr. SMITH being absent, Mr. Key attended as his counsel.

On request, by Mr. Key, that Mr. Harper be permitted to attend, also, as counsel on behalf of Mr. SMITH, a motion was made by Mr. BRADLEY, that Mr. Harper be admitted as one of the counsel for Mr. SMITH; and it passed in the affirmative. Whereupon, Mr. Harper attended.

The following request was submitted by Mr. Key:

JOHN SMITH, of Ohio, by his counsel, prays the honorable Senate to grant him further time to produce his testimony and prepare for his defence.

On motion, by Mr. TIFFIN,

Ordered, That the papers directed to the Secretary of the Senate, and which were taken as testimony in the case of JOHN SMITH, of Ohio, be referred to a select committee, to examine and report thereon, and that Messrs. ANDERSON, ADAMS, and TIFFIN, be the committee.

WEDNESDAY, March 2.

The bill, entitled "An act in addition to the act, entitled 'An act supplementary to the act, entitled "An act laying an embargo on all ships and vessels in the ports and harbors of the United States" was read the second time, and referred to Messrs. SMITH of Maryland, ADAMS, and HILLHOUSE, to consider and report thereon.

Mr. ANDERSON, from the committee appointed to examine and separate the depositions transmitted in the case of JOHN SMITH, a Senator from the State of Ohio, reported that they had performed that service.

Mr. SMITH, of Maryland, from the committee to whom was referred the bill, entitled "An act remitting the duties payable on the importation of a monument to be erected in memory of the officers of the United States Navy, who fell during the attack made on the city of Tripoli, in the year 1804," reported an amendment; which was read, and ordered to lie for consideration.

IMPRESSMENT OF AMERICAN SEAMEN.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate of the United States:

In compliance with a resolution of the Senate, of November 30, 1807, I now transmit a report of the Secretary of State on the subject of impressments, as requested in that resolution. The great volume of the documents, and the time necessary for the investigation, will explain to the Senate the causes of the delay which has intervened.

MARCH 2, 1808. TH. JEFFERSON.

DEPARTMENT OF STATE, *Feb.* 29, 1808.

Agreeably to a resolution of the Senate of the 30th November last, the Secretary of State has the honor to submit to the President, for the information of the Senate, the statements herewith enclosed, from No. 1 to 18, inclusive.

No. 1. A statement of impressments from American vessels into the British service, since the last report made from this department on the 5th March, 1806, founded upon documents transmitted in the first instance to this office.

Those from No. 2 to 13 inclusive, being a series of returns and abstracts received from General Lyman, the agent of the United States at London, giving an account of the applications made by him in relation to seamen, from 1st April, 1806, to 30th June, 1807, and of the result of those applications, and exhibiting other particulars required by the resolution.

Not having received any returns from the West Indies since the date of the last report to the House of Representatives on this subject, nor from General Lyman for the quarter ending on the 1st January last, the Secretary of State has not the means at present of giving, with any degree of precision, the information asked for in the last clause of the resolution. From the returns in the office it would appear that four thousand two hundred and twenty-eight American seamen had been impressed into the British service since the commencement of the war, and that nine hundred and thirty-six of this number had been discharged, leaving in that service three thousand two hundred and ninety-two. General Lyman, in a letter dated on the 21st October, 1807, estimates the American seamen now detained in the British service at a number greatly beyond what is here stated; but he does not give the data on which his estimate is made.

All which is respectfully submitted.

JAMES MADISON.

The PRESIDENT *of the United States.*

The Message and papers were read, and ordered to lie for consideration.

The Senate resumed, as in Committee of the Whole, the second reading of the bill authorizing the President of the United States to raise an ad-

ditional military force; and, after progress, adjourned.

THURSDAY, March 3.

Mr. THRUSTON informed the Senate that he had received from the Governor of Kentucky several resolutions, passed by the Legislature of that State, and addressed to the Congress of the United States, expressing their confidence in the wisdom, justice, and impartiality, of the present administration of the General Government, and their opinion of the outrageous and insulting conduct of one of the belligerent Powers towards the United States; and promising support to any measures for vindicating the national honor which the wisdom of Government may prescribe; and the resolutions were read.

The Senate resumed the consideration of the request of JOHN SMITH, submitted on 1st instant, by his counsel, as follows: "JOHN SMITH, of Ohio, 'by his counsel, prays the honorable Senate to 'grant him further time to produce his testimony 'and prepare for his defence;" and on motion, by Mr. ADAMS, the consideration of the first report of the committee appointed to inquire into the conduct of JOHN SMITH, a Senator from the State of Ohio, as an alleged associate of Aaron Burr, was postponed to Tuesday, the 15th instant.

On motion, by Mr. ADAMS,

Ordered, That the papers received by the Secretary of the Senate relating to the case of JOHN SMITH, a Senator from the State of Ohio, be subject to the inspection of his counsel.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act concerning public contracts;" also, a bill, entitled "An act in further addition to an act, entitled 'An act to amend the judicial system of the United States;" in which bills they request the concurrence of the Senate.

The bills were read, and ordered to the second reading.

The Senate resumed, as in Committee of the Whole, the second reading of the bill authorizing the President of the United States to raise an additional military force; and, after debate, the bill was referred to the committee who reported it, further to consider and report thereon.

Mr. ADAMS, from the committee to whom the subject was referred on the 5th and 16th of February, reported a bill authorizing the issuing of debentures in the cases therein mentioned; and the bill was read, and ordered to the second reading.

Mr. TIFFIN, from the committee to whom was committed the bill to amend the act, entitled "An act establishing circuit courts, and abridging the jurisdiction of the district courts of Kentucky, Tennessee, and Ohio," reported amendments; which were read, and ordered to lie for consideration.

FRIDAY, March 4.

The PRESIDENT communicated several letters from Elias Glover, referring to depositions enclosed, in the case of JOHN SMITH, a Senator from the State of Ohio; and the letters were read.

On motion, by Mr. GREGG,

Ordered, That the counsel on behalf of JOHN SMITH, a Senator from the State of Ohio, be authorized to take copies of the depositions in the case, under the direction of the Secretary of the Senate.

The bill, entitled "An act concerning public contracts," was read the second time, and referred to Messrs. ANDERSON, THRUSTON, and TURNER, to consider and report thereon.

The bill, entitled "An act in further addition to an act, entitled 'An act to amend the judicial system of the United States," was read the second time, and referred to Messrs. HILLHOUSE, CRAWFORD, and FRANKLIN, to consider and report thereon.

Mr. SMITH, of Maryland, from the committee to whom was referred the bill, entitled "An act in relation to the act, entitled 'An act supplementary to the act, entitled 'An act laying an embargo on all ships and vessels in the ports and harbors of the United States," reported amendments; which were read, and ordered to lie for consideration.

On motion, by Mr. POPE,

Ordered, That the bill for the punishment of treason and other crimes and offences against the United States, be the order of the day for Monday next.

The Senate resumed, as in Committee of the Whole, the amendments reported by the committee to the bill, entitled "An act to incorporate the Trustees of the Baptist Church in the City of Washington;" and the President having reported the bill to the House amended, it was ordered to a third reading as amended.

The Senate resumed, as in Committee of the Whole, the second reading of the bill to amend the act, entitled "An act to establish circuit courts, and abridging the jurisdiction of the district courts of the districts of Kentucky, Tennessee, and Ohio:" and the report of the select committee having been amended, was agreed to; and the President having reported the bill to the House accordingly, on the question, Shall this bill be engrossed and read the third time as amended? it was determined in the affirmative.

Mr. SMITH, of Maryland, from the committee to whom was referred the bill, entitled "An act for procuring an additional number of arms," reported an amendment.

The Senate proceeded, as in Committee of the Whole, to consider the said amendment; and it was agreed to; and the bill having been further amended, the President reported it to the House accordingly; and the bill was ordered to the third reading as amended.

The bill authorizing the issuing of debentures in the cases therein mentioned, was read the second time, and made the order of the day for Tuesday next.

Mr. GREGG reported, from the committee, that the amendment to the bill entitled "An act for procuring an additional number of arms," was cor-

rectly engrossed. The bill was read the third time, by unanimous consent, and the title having been amended, by adding thereto the words, "for the purchase of saltpetre and sulphur,"

Resolved, That this bill pass with amendments.

MONDAY, March 7.

Mr. HILLHOUSE, from the committee to whom was referred the bill, entitled "An act in further addition to an act, entitled 'An act to amend the judicial system of the United States," reported the bill with amendment. The bill was then by unanimous consent read the third time, and passed.

Mr. GREGG, from the committee, reported the amendments to the bill, entitled "An act to incorporate the Trustees of the Baptist Church in the City of Washington," correctly engrossed. The bill was read the third time and passed as amended.

Mr. GREGG, from the committee, reported the bill to amend the act, entitled "An act establishing circuit courts, and abridging the jurisdiction of the district courts of the districts of Kentucky, Tennessee, and Ohio," correctly engrossed. The bill was then read the third time and passed.

Mr. GILES, from the committee to whom was referred the bill authorizing the President of the United States to raise an additional army, reported amendments; which were read, and ordered to lie for consideration.

Mr. MITCHILL, from the committee to whom was referred, on the 15th of February, the petition of Philip Turner, made a report; which was read for consideration.

Mr. MITCHILL, from the same committee, asked and obtained leave to report a bill for the relief of Philip Turner; which was read, and ordered to the second reading.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

In the city of New Orleans, and adjacent to it, are sundry parcels of ground, some of them with buildings and other improvements on them, which it is my duty to present to the attention of the Legislature; the title to these grounds appears to have been retained in the former sovereigns of the Province of Louisiana, as public fiduciaries, and for the purposes of the province some of them were used for the residence of the Governor, for public offices, hospitals, barracks, magazines, fortifications, levees, &c., others for the town-house, schools, markets, landings, and other purposes of the city of New Orleans; some were held by religious corporations, or persons; others seem to have been reserved for future disposition. To these must be added a parcel, called the batture, which requires more particular description: it is understood to have been a shoal or elevation of the bottom of the river, adjacent to the bank of the suburbs of St. Mary, produced by the successive depositions of mud during the annual inundations of the river, and covered with water only during these inundations; at all other seasons it has been used by the city, immemorially, to furnish earth for raising their streets and court yards, for mortar, and other necessary purposes, and as a landing or quay for unlading firewood, lumber, and other articles brought by water. This having been lately claimed by a private individual, the city opposed the claim on a supposed legal title in itself; but it has been adjudged that the legal title was not in the city. It is, however, alleged that that title, originally in the former sovereigns, was never parted with by them, but was retained in them for the uses of the city and province, and consequently has now passed over to the United States. Until this question can be decided under Legislative authority, measures have been taken according to law, to prevent any change in the state of things, and to keep the grounds clear of intruders. The settlement of this title, the appropriation of the grounds and improvements, formerly occupied for provincial purposes, to the same or such other objects as may be better suited to present circumstances, the confirmation of the uses in other parcels to such bodies, corporate or private, as may of right, or on other reasonable considerations, expect them, are matters now submitted to the determinations of the Legislature.

The papers and plans now transmitted will give them such information on the subject as I possess; and, being mostly originals, I must request that they be communicated from the one to the other House, to answer the purposes of both.

TH. JEFFERSON.

MARCH 7, 1808.

The Message was read, and ordered to lie for consideration.

On motion, by Mr. ADAMS,

Ordered, That three hundred copies of the message and documents received from the President of the United States, on the 2d instant, relative to impressed American seamen, be printed for the use of the Senate.

The Senate resumed, as in Committee of the Whole, the amendments of the select committee to the bill, entitled "An act in addition to the act, entitled 'An act supplementary to the act, entitled 'An act laying an embargo on all ships and vessels in the ports and harbors of the United States," which were further amended and agreed to; and the President having reported the bill to the House amended accordingly, the bill was ordered to the third reading as amended.

Mr. SMITH, of Maryland, from the committee to whom was referred, on the 30th of October last, so much of the Message of the President of the United States, at the commencement of the session, as relates to the formation of the seamen of the United States into a special militia for the defence of the harbors against sudden attacks, reported a bill for the establishing a militia for the port and harbor service of the United States; which was read, and ordered to the second reading.

The Senate resumed, as in Committee of the Whole, the amendment reported by the select committee to the bill, entitled "An act remitting the duties payable on the importation of a monument to be erected in memory of the officers of the United States Navy, who fell during the attack made on the city of Tripoli in the year 1804." And, on the question to agree to the said amendment, as follows:

"SEC. 2. *And be it further enacted*, That the Secretary of the Navy be, and he is hereby, authorized to cause the said monument to be erected in such place as the President of the United States may direct, to-

gether with such railing and covering as may be necessary for protecting the same from injury. And, for the purpose of carrying the above object into effect, the sum of —— dollars is hereby appropriated, to be paid out of any moneys in the Treasury not otherwise appropriated.

It was determined in the affirmative—yeas 18, nays 12, as follows:

YEAS—Messrs. Adams, Anderson, Bayard, Bradley, Gilman, Goodrich, Maclay, Mathewson, Mitchill, Moore, Pickering, Pope, Reed, Smith of Maryland, Smith of New York, Smith of Tennessee, Thruston, and Tiffin.

NAYS—Messrs. Condit, Crawford, Franklin, Gaillard, Gregg, Howland, Kitchel, Milledge, Parker, Robinson, Sumter, and Turner.

And the PRESIDENT having reported the bill to the House amended, it was ordered to the third reading as amended.

Mr. GREGG reported, from the Committee, that the amendments to the bill, entitled "An act in addition to the act, entitled 'An act supplementary to the act, entitled 'An act laying an embargo on all ships and vessels in the ports and harbors of the United States,'" were correctly engrossed.

The Senate resumed, as in Committee of the Whole, the second reading of the bill for opening a road in the Indiana Territory; and on the question, Shall this bill be engrossed and read the third time, it was determined in the affirmative.

TREASON AND OTHER CRIMES.

The Senate resumed, as in Committee of the Whole, the second reading of the bill for the punishment of treason, and other crimes and offences against the United States.

On motion, by Mr. MITCHILL, to strike out the first section, as follows:

"*Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled,* That if any person owing allegiance to the United States of America, shall levy war against them, by assembling themselves together, with intent forcibly to overturn or change the Government of the United States, or any one of the Territories thereof, or forcibly to dismember the said United States, or any one of them, or any one of the Territories thereof, or forcibly to resist the general execution of any public law thereof, or forcibly to take possession of, or hold, any fort, magazine, dock, navy-yard, or of any public vessel of the United States, or forcibly to invade or hold any part of the United States, or of the Territories thereof, against the authority of the United States, or if any such person or persons shall traitorously aid or assist in the doing any one of the acts aforesaid, although not personally present when any such act is done or committed, and being convicted of any one or more of the aforesaid acts, on confession in open court, or on the testimony of two witnesses to the same overt act of treason, whereof he or they shall stand indicted, such person or persons shall be adjudged guilty of treason against the United States, and shall suffer death:"

It was determined in the negative—yeas 15, nays 17, as follows:

YEAS—Messrs. Bayard, Bradley, Gilman, Goodrich, Gregg, Hillhouse, Maclay, Milledge, Mitchell, Pickering, Pope, Reed, Thruston, Turner and White.

NAYS—Messrs. Adams, Anderson, Condit, Crawford, Franklin, Gaillard, Giles, Howland, Kitchel, Mathewson, Moore, Parker, Robinson, Smith of Maryland, Smith of New York, Smith of Tennessee, and Tiffin.

On motion, by Mr. ADAMS, it was agreed to recommit the bill to the committee that reported it; and, on motion, by Mr. CRAWFORD, Messrs. POPE and FRANKLIN were added to the committee.

TUESDAY, March 8.

The bill for establishing a militia for the port and harbor service of the United States was read the second time, and ordered to lie for consideration.

The bill for the relief of Philip Turner was read the second time; and on the question, Shall this bill be engrossed and read the third time? it was determined in the affirmative.

The Senate resumed, as in Committee of the Whole, the second reading of the bill, authorizing the President of the United States to raise an additional military force; and the amendments reported by the select committee having been agreed to, and the bill further amended, the President reported the bill to the House accordingly. On the question, Shall this bill be engrossed and read the third time? it was determined in the affirmative.

Mr. GREGG, from the committee, reported the amendments to the bill, entitled "An act remitting the duties payable on the importation of a monument, to be erected in memory of the officers of the United States Navy, who fell during the attack made on the city of Tripoli, in the year 1804," correctly engrossed. The bill was then read the third time, as amended, and passed.

Mr. GREGG, from the committee, reported the bill for opening a road in the Indiana Territory correctly engrossed; and the bill was read the third time.

On motion, by Mr. POPE, the bill was recommitted to the committee by whom it was reported, further to consider and report thereon.

The bill, entitled "An act in addition to the act, entitled 'An act supplementary to the act, entitled An act laying an embargo on all ships and vessels in the ports and harbors of the United States,'" was read the third time as amended.

Resolved, That this bill pass with amendments.

The Senate resumed, as in Committee of the Whole, the second reading of the bill authorizing the issuing of debentures in the cases therein mentioned, and the further consideration of the bill was postponed until to-morrow.

WEDNESDAY, March 9.

Mr. GREGG, from the committee, reported the bill authorizing the President of the United States to raise an additional military force, correctly engrossed. The bill was read the third time; and the title having been amended,

Resolved, That this bill pass, and that the title thereof be "An act for raising an additional military force."

The bill for the relief of Philip Turner was read the third time, and passed.

A message from the House of Representatives

informed the Senate that the House disagree to the amendment of the Senate to the bill, entitled "An act remitting the duties payable on the importation of a monument, to be erected in memory of the officers of the United States Navy, who fell during the attack made on the city of Tripoli, in the year 1804." They concur in the amendments to the bill, entitled "An act for procuring an additional number of arms;" also, in the amendments to the bill, entitled "An act laying an embargo on all ships and vessels in the ports and harbors of the United States," with amendments; in which they request the concurrence of the Senate; and that they have passed a bill, entitled "An act authorizing the sale of public arms;" in which they request the concurrence of the Senate.

The bill last brought up for concurrence was read, and ordered to the second reading.

The Senate resumed, as in Committee of the Whole, the second reading of the bill authorizing the issuing of debentures, in the cases therein mentioned.

On motion, by Mr. Bradley,

Ordered, That this bill be recommitted to the committee that reported it, and that Messrs. Anderson and Bayard be added to the committee, further to consider and report thereon.

The Senate proceeded to consider the amendments of the House of Representatives to their amendments to the bill, entitled "An act in addition to the act, entitled 'An act supplementary to the act, entitled 'An act laying an embargo on all ships and vessels in the ports and harbors of the United States;" and concurred therein.

The Senate proceeded to consider their amendment disagreed to by the House of Representatives to the bill, entitled "An act remitting the duties payable on the importation of a monument to be erected in memory of the officers of the United States Navy, who fell during the attack made on the city of Tripoli, in the year 1804;" and it was *Resolved*, That the Senate recede from their said amendment.

The bill for establishing a militia for the port and harbor service of the United States, was read the second time, and the further consideration thereof was postponed.

Thursday, March 10.

The bill, entitled "An act authorizing the sale of public arms," was read the second time, and referred to Messrs. Reed, Gaillard, and Bradley, to consider and report thereon.

The Senate resumed, as in Committee of the Whole, the second reading of the bill for establishing a militia for the port and harbor service of the United States; and the further consideration of the bill was postponed until to-morrow.

Friday, March 11.

Mr. Anderson, from the committee to whom was referred the bill, entitled "An act concerning public contracts," reported it without amendment.

A message from the House of Representatives informed the Senate that the House have passed the bill, entitled "An act granting William Wells the right of pre-emption," with amendments; in which they request the concurrence of the Senate.

The Senate resumed, as in Committee of the Whole, the second reading of the bill for establishing a militia for the port and harbor service of the United States.

On motion, by Mr. Bayard, the further consideration of the bill was postponed to the first Monday in December next.

A message from the House of Representatives informed the Senate that the House have passed the bill, entitled "An act for erecting a light-house and placing buoys at the places therein mentioned," with amendments; in which they request the concurrence of the Senate. The House of Representatives have passed a bill, entitled "An act extending the time for issuing and locating military land warrants; a bill, entitled "An act concerning the sale of the lands of the United States, and for other purposes;" also, a bill, entitled "An act authorizing a detachment from the militia of the United States;" in which bills they request the concurrence of the Senate.

The bills were read, and ordered to the second reading.

The Senate proceeded to consider the amendments of the House of Representatives to the bill, entitled "An act granting William Wells the right of pre-emption," and concurred therein.

Mr. Adams, from the committee to whom was referred the bill authorizing the issuing of debentures in the cases therein mentioned," reported an amendment; which was read, and ordered to lie for consideration.

The Senate proceeded to consider the amendments of the House of Representatives to the bill entitled "An act for erecting a light-house and placing buoys at the places therein mentioned."

Ordered, That the said amendments be referred to Messrs. Mitchill, Milledge, and Goodrich, to consider and report thereon.

On motion, by Mr. Gregg, the bill, entitled "An act extending the time for issuing and locating military land warrants," was read the second time by unanimous consent, and referred to Messrs. Gregg, Franklin, and Tiffin, to consider and report thereon.

The bill, entitled "An act authorizing a detachment from the militia of the United States," was read the second time by unanimous consent, and referred to Messrs. Sumter, Reed, and Bradley, to consider and report thereon.

The bill, entitled "An act concerning the sale of the lands of the United States, and for other purposes," was read the second time by unanimous consent, and referred to Messrs. Franklin, Gregg, and Mathewson, to consider and report thereon.

Monday, March 14.

A message from the House of Representatives informed the Senate that the House have passed

a bill, entitled "An act concerning courts martial and courts of inquiry," in which they request the concurrence of the Senate.

The bill was read, and ordered to the second reading.

Mr. GREGG, from the committee to whom was referred the bill, entitled "An act extending the time for issuing and locating military land warrants," reported the bill without amendment, and it was ordered to the third reading.

Mr. MITCHILL, from the committee to whom were referred the amendments of the House of Representatives to the bill, entitled "An act for erecting a light-house and placing buoys at the places therein mentioned," made report. Whereupon,

Resolved, That the Senate concur in the said amendments.

The Senate resumed, as in Committee of the Whole, the second reading of the bill, entitled "An act concerning public contracts; and, on motion of Mr. S. SMITH to amend the bill, the further consideration thereof was postponed until to-morrow.

Mr. GILES, from the committee to whom was referred the bill for the punishment of treason and other crimes and offences against the United States, reported amendments.

TUESDAY, March 15.

The bill, entitled "An act concerning courts-martial and courts of inquiry," was read the second time, and referred to Messrs. GILES, ADAMS, and GREGG, to consider and report thereon.

On motion of Mr. S. SMITH,

Ordered, That the Message of the President of the United States, on the 7th instant, relative to public grounds in and adjacent to the city of New Orleans, be referred to Messrs. GILES, S. SMITH, and ANDERSON, to consider and report thereon.

The PRESIDENT communicated a report of the Secretary of the Treasury, with a statement of the emoluments of the officers employed in the collection of the Customs, for the year 1807; which were read.

The bill, entitled "An act extending the time for issuing and locating military land warrants," was read the third time and passed.

The Senate resumed, as in Committee of the Whole, the amendments reported by the select committee to the bill for the punishment of treason and other crimes and offences against the United States; and the further consideration of the bill was postponed until to-morrow.

The Senate resumed, as in Committee of the Whole, the amendment reported by the select committee to the bill authorizing the issuing of debentures in the cases therein mentioned, which was agreed to; and the PRESIDENT having reported the bill to the House amended accordingly, on the question, Shall this bill be engrossed and read the third time as amended? it was determined in the affirmative.

The Senate resumed, as in Committee of the Whole, the amendment reported by the select committee to the bill, entitled "An act concerning public contracts;" and the further consideration of the bill was postponed until to-morrow.

CASE OF JOHN SMITH.

Agreeably to the order of the day, the Senate resumed the consideration of the first report of the committee appointed to inquire into the conduct of JOHN SMITH, a Senator from the State of Ohio, as an alleged associate of Aaron Burr.

Messrs. HARPER and KEY, counsel for Mr. SMITH, attended.

Mr. HARPER read a letter from Mr. SMITH, requesting further time to enable him to prepare for his defence; and requested, in Mr. SMITH's behalf, an extension of the time accordingly. The letter is as follows:

CINCINNATI, *Feb.* 12, 1808.

GENTLEMEN: After the Senate had resolved to hear my testimony on the first of March, I made, without a moment's delay, the best arrangement in my power to collect it. Being fully convinced that my defence would be incomplete without the testimony of witnesses in the States of Connecticut, New York, Kentucky, and Ohio, and in the Territories of Orleans and Mississippi, and it being physically impossible for me within the short period allowed by the resolution to attend in person at each of those places, I wrote to individuals with whom I was acquainted, and on whose friendship and exertions I thought a reliance could be placed, requesting them to procure the testimony required from five respective neighborhoods, and to forward it without a moment's delay to the seat of Government. At the same time it was necessary for me, by the resolution under which I acted, to designate the particular days which the evidence at each place would be taken, and to give reasonable notice of the same to the persons whose testimony might be affected or was intended to be impeached thereby. At this time you know I was at Washington City. My witnesses were dispersed, as stated above, and the persons on whom a service of notice was required, were in different parts of the country.

Thus circumstanced, the task before me appeared an Herculean one; but the object to be obtained was of infinite moment to myself, my family, and my friends, and, may I not add, not wholly uninteresting to my country. I therefore did not permit myself to despair for a moment, but made every exertion in my power to put myself in a state of preparation to meet the inquiry on the day appointed. Having arranged the time of taking testimony in different places, written to those by whose aid I expected to procure it, and forwarded notices to the persons who, by the resolution, were entitled to receive them, I immediately set out for Cincinnati, to attend in person to the taking of testimony in this State, and in Kentucky; but my journey was so impeded by excessive rains, bad roads, and high water, that I did not arrive at this place, till the evening of the ninth instant and to increase my embarrassment, already too great, it appeared, on inquiry, that the notice which I had forwarded by mail under cover to the postmaster, for Elias Glover, had not come to hand. The day appointed by that notice was the tenth instant; it therefore became necessary, as well on his account as my own, to appoint a more distant day: I accordingly gave notice that I should proceed, on the thirteenth instant, to take testimony, and immediately despatched messengers to bring in my witnesses from Lebanon, Dayton, Hamilton, and Laurenceburg.

The moment I can obtain the depositions of the witnesses in this quarter, which will unavoidably occupy some days, I shall, without losing a moment, proceed to Lexington, and from thence to Bellpree and Marietta, on my way to the seat of Government, at each of which places I expect to procure testimony that will be important in my defence. What length of time will be required to complete this tour, God only knows, but I pledge myself that it shall be accomplished in as short a space as is within the power of human exertions, and yet I cannot venture a hope of being so successful as to come at the place of my destination by the first of March. I have contemplated forwarding my testimony by mail as fast as I can obtain it—that as much of it may be before the Senate as shall be possible, prior to the day appointed for the investigation, though I dread the consequences that may be expected from the irregularity and uncertainty of the mail, at this inclement season, when its progress is so often retarded by bad roads, ice, and high water. If such difficulty and unavoidable delay is found to attend the attempt made by myself to obtain evidence in this quarter, what have I not to fear for the exertions of those in other places, who have not the same motives to stimulate them, that I feel? It is truly a painful idea, that a question of such importance to my feelings, character, family, and future prospects in the world, should be decided in my absence, or even in my presence, before I can be prepared to meet it—knowing, as I do, that nothing is wanting to secure my reputation and establish my innocence, before the Senate and the world, but testimony that I can and will procure if indulged with reasonable time. Do not conjecture that I feel the most distant desire of evading the inquiry, or of delaying it one day longer than necessity compels me to request, and justice entitles me to expect. It has been invited by me, and I wish to meet it during the present session; nor can I yet believe there is one solitary member on the floor of the Senate who seeks a sacrifice, by hurrying me through the forms of a trial with such rapidity as to exclude the possibility of a defence, and thus to cut me off from the hope of every advantage I have calculated on deriving therefrom. Although I might collect much of the evidence in this part of the country, and reach the seat of Government with it by the first of April, yet I cannot collect the whole, as some of the witnesses are now absent on business; nor can I reasonably hope to receive returns from my friends, to whom I have written, in other quarters, before the middle of that month: And permit me to assure gentlemen that the facts which I can unequivocally prove by the witnesses in Connecticut, in the northern parts of the State of New York, and at Point Coupee, and in that quarter, will compose a most important part of my justification. The season of the year in which I am compelled to collect the evidence required to meet the charges, presents difficulties peculiar to itself: the reluctance with which persons who have a knowledge of facts tending to criminate another, discover their information when they know it will be required and used as testimony; the difficulty of procuring the attendance of witnesses without the aid of compulsory process, which has not been allowed me, and particularly when a part of those witnesses are the personal enemies of the party wanting them, as is unfortunately my case; the necessity of giving personal and reasonable notice to those who may be affected by the testimony, and of proving before the Senate the actual service of that notice, added to the uncertainty of finding the witnesses at their usual places of abode, create embarrassments and delays not easily to be overcome. But I have said enough to apprize you of my situation, prospects, and wishes, and I must rely on your justice and candor for the result, which I cannot but hope and expect will be a reasonable extension of the time heretofore granted.

I am, gentlemen, very respectfully, yours, &c.

JOHN SMITH, of Ohio.

Hon. J. A. BAYARD, and W. B. GILES.

Mr. HILLHOUSE moved a postponement to the first Monday, of April.

Messrs. ROBINSON, CRAWFORD, GREGG, and ANDERSON, opposed, and Mr. ADAMS supported this motion.

Mr. KITCHEL expressed a hope that, if a postponement obtained, it would not be to so distant a day.

Mr. HILLHOUSE acquiesced in the suggestion.

Mr. GILES moved a postponement to Monday week. This motion was supported by Messrs. GILES, ADAMS, and BAYARD, and was opposed by Messrs. S. SMITH and ANDERSON; when the question was taken by yeas and nays, and the motion negatived—yeas 15, nays 17.

At the request of Mr. SMITH's counsel the business was postponed till to-morrow.

The arguments assigned in favor of postponing to a future day the consideration of the report relative to Mr. SMITH, principally, were, that he had not had sufficient time to obtain testimony, owing to the distance of the scene, and the badness of the roads and weather; that the proposed delay, being within the session, could not be prejudicial to the public interest or that of the State of Ohio, as ample time would still remain for discussion.

On the other hand, it was contended that ample time had already been allowed; that it was to be presumed that all the testimony he could procure was already either in the possession of the Senate or of his counsel; that it was but too probable, from the contemplated period of the session when Mr. S. left the city, that it was not his intention to meet an investigation before the Senate; that Congress had already entered the sixth month of their session, and that there was reason to expect that they would not continue to sit more than a few weeks; and that if the motion to postpone prevailed, their attention would, at the close of the session, be distracted by this subject, when business of great national moment would probably claim their whole time.

During the discussion, Mr. HILLHOUSE said he had received an anonymous letter in relation to his conduct in this case, and took occasion to say that he should treat all such improper attempts to influence him with contempt.

Mr. S. SMITH observed, that he too had received an anonymous letter, which had, however, given him but little concern.

Mr. ADAMS said, he believed, if they were to compare notes, it would be found that many of the members had been honored with anonymous letters on this business. He, for one, had received anonymous letters, bearing date at Cincinnati and elsewhere. He, added, that during the session he had received many epistles of this description, and on various subjects, some couched in terms of

censure, and others in terms of approbation, neither of which would have any influence on the discharge of his public duty.

WEDNESDAY, March 16.

Mr. ANDERSON, from the committee appointed on the 3d of February to consider the subject, reported a bill making provision for the disposal of the public lands of the United States in the State of Tennessee, and for other purposes; which was read, and ordered to the second reading.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act further to prolong the continuance of the Mint at Philadelphia," in which they request the concurrence of the Senate.

The bill last mentioned was read, and ordered to the second reading.

Mr. GREGG, from the committee, reported the bill authorizing the issuing of debentures in the cases therein mentioned, correctly engrossed.

CASE OF JOHN SMITH.

The Senate resumed the consideration of the first report of the committee appointed to inquire into the conduct of JOHN SMITH, a Senator from the State of Ohio, as an alleged associate of Aaron Burr.

Mr. HARPER, of counsel for Mr. SMITH, offered a memorial, signed by himself and Mr. KEY, requesting further time, until the first Monday in April. The principal reasons assigned for this request are:

1. The want of due formality in the deposition of George Russell, which went to impeach the credibility of Elias Glover. This deficiency arose from the deposition having been taken without proof of notice to Elias Glover. The counsel intimate their expectation that a deposition, with the requisite formalities, will be received by the first Monday in April.

2. They state that none of the expected depositions, to prove that the visit of Colonel Burr was merely a visit of cermony or politeness, had been received, which they can ascribe to no other cause than a want of time.

3. The absence of Mr. SMITH, and their consequent inability to do justice to his defence, as well from the want of his aid, as from the want of important testimony probably in his possession.

4. The memorial states that on the postponement which took place on the first of this month, in consequence of personal conversation with several of the committee, and particularly the Chairman, one of the counsel (Mr. Key) had informed Mr. SMITH that there was no doubt of an indulgence to the 1st of April, and that he might safely regulate his movements so as to be here by that time.

Mr. HARPER added, that the counsel of Mr. SMITH disclaimed any intention unnecessarily to delay this case; and that they pledged themselves, if this indulgence should be granted, to ask no further.

Mr. ADAMS presumed it was not the intention of the counsel to misunderstand or misrepresent anything which he had said to him. The facts were these: On the 1st of March the counsel informed him that Mr. SMITH was neither present nor ready for his defence. He (Mr. A.) then observed, that if he desired it, he would make a motion for postponement, and asked him to mention to what day he wished the postponement. The counsel replied that it might be a month before Mr. SMITH would be ready; but he would prefer a postponement for a shorter time, that if Mr. SMITH should previously arrive, the business might be taken up. He (Mr. A.) had certainly no objection to a further continuance; but if the counsel, from anything which he had said, considered the Senate as pledged, he must have misunderstood him.

Mr. KEY said he might have misunderstood the gentleman. He did not consider the Senate as pledged; but his impression was, that there could be no doubt that further time would be allowed, and under that impression he had written to Mr. SMITH.

Mr. HARPER said the counsel did not wish to consider any member of the Senate as pledging the Senate. He knew that that could not be the case. That this was, therefore, a mistake, on their part, he admitted. But if it were to be attended with ill consequences, he hoped they would be confined to them, and not fall on Mr. SMITH.

Mr. BRADLEY moved that the further consideration of the case be postponed until the first Monday in April.

Some intimation having been made to limit the postponement to the 1st day of April, Mr. HARPER said he would extend the pledge he had made to that day.

On the motion of postponement to the 1st Monday of April, the Senate divided—yeas 16 nays 16.

The PRESIDENT declaring himself in the negative, the question was lost.

Mr. BAYARD moved a postponement to the first day of April, and supported the motion at some length. [His remarks are generalized in the following summary of the arguments.]

The VICE PRESIDENT said that the remarks of the gentleman who had just spoken made it proper for him to explain the reasons which had induced him to give his casting vote against the motion. When Mr. SMITH made his first application for further time, it was founded on his affidavit. This was, at the time, thought essential to justify the indulgence, and great weght was attached to it. It was not material what his private sentiments were as to that procedure. Further time has since been allowed to him, and an extension of it had been now asked on the mere suggestion of his counsel, without affidavit. With respect to the mistake stated to have been committed by his counsel, he should have been disposed to have given the most liberal decision. Had not the counsel attended from the commencement of the business, and seen that there was nearly an equal vote on the previous indulgence, and if this (notwithstanding any conversation he might have had with an individual member) was not a suffi-

cient admonition to be prepared, he knew not what could be. He would add, that the protraction of the business to the 1st Monday of April would be a pledge on the part of the Senate that they would remain in session to that day, or it would operate to the letting Mr. SMITH go without a hearing.

The postponement was advocated by Messrs. BAYARD, HILLHOUSE, POPE, PICKERING, and GILES; and opposed by Messrs. S. SMITH, CRAWFORD, ANDERSON, and MITCHILL.

The advocates of the motion contended that the Senate, having agreed to hear Mr. SMITH, it became incumbent upon them to allow him sufficient time to collect the materials for his defence; that sufficient time had not been granted; that the season had been unusually bad for travelling, and that the mail, on which he had in some instances relied, had frequently failed; that the mistake into which his counsel had fallen was extremely natural, when it was considered that the disposition of business before Congress generally depended on the chairmen of committees; that if sufficient time were not allowed in this instance, the decision of the members might be exposed to great embarrassment, and some, who, on a full disclosure of facts, might vote for his expulsion, under such circumstances, might decide otherwise; that in the mere point of economy of time, the delay desired ought to be granted; for that, if the case were at present prematurely brought on, the counsel, under the delicate circumstances in which they were placed, could not fail, from time to time, to renew an application for further time, in which, considering the equal vote of the Senate, much discussion would unavoidably arise.

The opponents of the postponement observed that the present case was very different from those generally brought before courts of justice; that all that was necessary for the Senate, was to be convinced of the unworthiness of Mr. SMITH to hold a seat, to expel him; that, notwithstanding, time, and in their opinion ample time, had been allowed him to make his defence; that all the material evidence from the States where he had not been in person, was already received, and that it was to be presumed, from the depositions received, that all the evidence in his power to collect, was also received from the other States; that the only material evidence of which the charges against him were sustained, was that of Elias Glover, Peter Taylor, and Colonel James Taylor, and that various depositions relative to them were in possession either of the Senate or the counsel; that, under these circumstances, it could only be inferred to be the object of Mr. SMITH, by these frequent applications for delay, altogether to avoid an investigation before the Senate; that, unless the present time was improved, the session would be so nearly brought to a close, and so much business, probably of the utmost importance, be then pressing for the entire attention of Congress, as altogether to prevent the investigation of this case, or that full and dispassionate examination of it that it became the Senate to make.

They added, that if the Senate proceeded immediately in the consideration of the report, if any thing occurred which made a further delay necessary, it was in their power to, and they no doubt would, allow further time.

The question was taken by yeas and nays on postponement to the first day of April, and carried—yeas 17, nays 15, as follows:

YEAS—Messrs. Adams, Bayard, Bradley, Gaillard, Giles, Goodrich, Hillhouse, Howland, Mathewson, Milledge, Pickering, Pope, Reed, Smith of New York, Sumter, Thruston and White.

NAYS—Messrs. Anderson, Condit, Crawford, Franklin, Gilman, Gregg, Kitchel, Maclay, Mitchel, Moore, Parker, Robinson, Smith of Maryland, Smith of Tennessee, and Turner.

The Senate resumed, as in Committee of the Whole, the second reading of the bill for the punishment of crimes and other offences against the United States; and, after debate, adjourned.

THURSDAY, March 17.

The bill, entitled "An act further to prolong the continuance of the Mint at Philadelphia," was read the second time, and referred to Messrs. ANDERSON, FRANKLIN, and REED, to consider and report thereon.

The bill making provision for the disposal of the public lands of the United States in the State of Tennessee, and for other purposes, was read the second time.

Mr. BRADLEY submitted the following motion for consideration:

"That a committee be appointed, to join such committee as the House of Representatives may appoint on their part, to consider and report what business is necessary to be done by Congress in the present session, and when it may be expedient to close the same."

Mr. SUMTER, from the committee to whom was referred the bill, entitled "An act authorizing a detachment from the militia of the United States," reported an amendment, which was read.

The Senate resumed, as in Committee of the Whole, the consideration of the amendments to the bill for the punishment of treason and other crimes and offences against the United States, and, after progress, the consideration thereof was postponed until to-morrow.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of
Representatives of the United States:

I have, heretofore, communicated to Congress the decrees of the Government of France, of November 21, 1806, and of Spain, of February 19, 1807, with the orders of the British Government of January and November, 1807.

I now transmit a decree of the Emperor of France, of December 17, 1807, and a similar decree of the 3d of January last, by His Catholic Majesty.

Although the decree of France has not been received by official communication, yet the different channels of promulgation through which the public are possessed of it, with the formal testimony furnished by the Government of Spain, in their decree, leave us without a doubt that such an one has been issued. These decrees and orders, taken together, want little of amounting to

a declaration that every neutral vessel found on the high seas, whatsoever be her cargo, and whatsoever foreign port be that of her departure or destination, shall be deemed lawful prize; and they prove more and more the expediency of retaining our vessels, our seamen, and property, within our own harbors, until the dangers to which they are exposed can be removed or lessened,

MARCH 17, 1808. TH. JEFFERSON.

The Message and papers therein referred to were read.

Mr. FRANKLIN, from the committee to whom was referred the bill, entitled "An act concerning the sale of the lands of the United States, and for other purposes," reported amendments, which were read.

FRIDAY, March 18.

The Senate resumed, as in Committee of the Whole, the consideration of the amendments proposed to the bill, entitled "An act concerning public contracts; and

Ordered, That the said bill be recommitted to Messrs. GILES, ADAMS, SMITH of Maryland, ANDERSON, and THRUSTON, further to consider and report thereon.

The Senate resumed, as in Committee of the Whole, the consideration of the amendments reported by the select committee to the bill for the punishment of treason, and other crimes and offences against the United States, which were agreed to; and the bill having been further amended, on motion, it was agreed further to postpone the consideration thereof.

A message from the House of Representatives informed the Senate that the House have passed the bill, entitled "An act to amend the act, entitled 'An act establishing circuit courts, and abridging the jurisdiction of the district courts of the districts of Kentucky, Tennessee, and Ohio," with amendments, in which they request the concurrence of the Senate.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

The scale on which the military academy at West Point was originally established has become too limited to furnish the number of well-instructed subjects in the different branches of artillery and engineering which the service calls for. The want of such characters is already sensibly felt, and will be increased with the enlargement of our plans of military preparation. The Chief Engineer having been instructed to consider the subject, and to propose an augmentation which might render the establishment commensurate with the present circumstances of our country, has made the report which I now transmit for the consideration of Congress.

The idea suggested by him, of removing the institution to this place, is also worthy of attention. Besides the advantage of placing it under the immediate eye of the Government, it may render its benefits common to the Naval department, and will furnish opportunities of selecting, on better information, the characters most qualified to fulfil the duties which the public service may call for. TH. JEFFERSON.

MARCH 18, 1808.

The Message and papers therein mentioned were read, and referred to Messrs. SMITH of Maryland, BRADLEY, GILMAN, ANDERSON, and SUMTER, to consider and report thereon.

The Senate resumed, as in Committee of the Whole, the amendments reported by the select committee to the bill, entitled "An act concerning the sale of the lands of the United States, and for other purposes," which were amended and agreed to, and the President reported the bill to the House accordingly.

Ordered, That this bill pass to the third reading as amended.

The Senate considered the amendments of the House of Representatives to the bill, entitled "An act to amend the act, entitled 'An act establishing circuit courts, and abridging the jurisdiction of the district courts in the districts of Kentucky, Tennessee, and Ohio," and concurred therein.

MONDAY, March 21.

Mr. ANDERSON, from the committee to whom was referred the bill, entitled "An act further to prolong the continuance of the Mint at Philadelphia," reported it without amendment.

Ordered, That this bill pass to a third reading.

Mr. GREGG reported, from the committee, that the amendments to the bill, entitled "An act concerning the sale of the lands of the United States, and for other purposes," were correctly engrossed.

The bill last mentioned was read the third time as amended, and passed.

The PRESIDENT communicated a further report of the Attorney General, in pursuance of the order of the Senate of 6th February, 1807, with the table of fees paid in the States of Virginia and Kentucky: which were read.

The Senate resumed, as in Committee of the Whole, the second reading of the bill making provision for the disposal of the public lands of the United States in the State of Tennessee, and for other purposes; and on motion, by Mr. BRADLEY, to amend the bill, it was agreed that the further consideration thereof be postponed until to-morrow.

Mr. GILES, from the committee to whom was referred the bill, entitled "An act concerning courts martial and courts of inquiry," reported it with amendments: which were read, and ordered to lie for consideration.

The Senate took into consideration, as in Committee of the Whole, the amendment reported by the select committee to the bill, entitled "An act authorizing a detachment from the militia of the United States;" and the President reported the bill amended accordingly.

Ordered, That it pass to the third reading as amended.

Mr. ANDERSON presented the petition of Richard Sparkes, stating that, in March, 1806, in descending the Tennessee river with a detachment of the troops of the United States, his boat was stove and sunk, whereby the petitioner lost private property to a considerable amount, together with three hundred dollars public money, for which he

is held accountable, and praying relief; and the petition was read, and referred to Messrs. ANDERSON, BRADLEY, and GREGG, to consider and report thereon.

Mr. REED, from the committee to whom was referred the bill, entitled "An act authorizing the sale of public arms," reported amendments; which were read, and ordered to lie for consideration.

TUESDAY, March 22.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

At the opening of the present session I informed the Legislature that the measures which had been taken with the Government of Great Britain for the settlement of our neutral and national rights, and of the conditions of commercial intercourse with that nation, had resulted in articles of a treaty which could not be acceded to on our part; that instructions had consequently been sent to our Ministers there to resume the negotiations, and to endeavor to obtain certain alterations, and that this was interrupted by the transaction which took place between the frigates Leopard and Chesapeake; the call on that Government for reparation of this wrong produced, as Congress have been already informed, the mission of a special Minister to this country, and the occasion is now arrived when the public interest permits and requires that the whole of these proceedings should be made known to you.

I therefore now communicate the instructions given to our Minister resident at London, and his communications to that Government on the subject of the Chesapeake, with the correspondence which has taken place here between the Secretary of State and Mr. Rose, the special Minister charged with the adjustment of that difference; the instructions to our Ministers for the formation of a treaty; their correspondence with the British Commissioners and with their own Government on that subject; the treaty itself, and written declaration of the British Commissioners accompanying it, and the instructions given by us for resuming the negotiation, with the proceedings and correspondence subsequent thereto. To these I have added a letter lately addressed to the Secretary of State from one of our late Ministers, which, though not strictly written in an official character, I think it my duty to communicate, in order that his views of the proposed treaty, and of its several articles, may be fairly presented and understood.

Although I have heretofore, and from time to time, made such communications to Congress as to keep them possessed of a general and just view of the proceedings and dispositions of the Government of France towards this country, yet, in our present critical situation, when we find that no conduct on our part, however impartial and friendly, has been sufficient to insure from either belligerent a just respect for our rights, I am desirous that nothing shall be omitted on my part which may add to your information on this subject, or contribute to the correctness of the views which should be formed. The papers which for these reasons I now lay before you embrace all the communications, official or verbal, from the French Government, respecting the general relations between the two countries which have been transmitted through our Minister there, or through any other accredited channel, since the last session of Congress, to which time all information of the same kind had, from time to time, been given them. Some of these papers have already been submitted to Congress; but it is thought better to offer them again, in order that the chain of communications, of which they make a part, may be presented unbroken.

When, on the 26th February, I communicated to both Houses the letter of General Armstrong to M. Champagny, I desired it might not be published, because of the tendency of that practice to restrain injuriously the freedom of our foreign correspondence. But, perceiving that this caution, proceeding purely from a regard for the public good, has furnished occasion for disseminationg unfounded suspicions and insinuations, I am induced to believe that the good which will now result from its publication, by confirming the confidence and union of our fellow-citizens, will more than countervail the ordinary objection to such publications. It is my wish, therefore, that it may be now published.

TH. JEFFERSON.

MARCH 22, 1808.

The Message and papers therein referred to were in part read, and five hundred copies of the Message and papers, numbered 1, 2, and 3, therein referred to, ordered to be printed for the use of the Senate.

WEDNESDAY, March 23.

Mr. GREGG reported, from the committee, the amendment to the bill, entitled "An act authorizing a detachment from the militia of the United States," correctly engrossed. The bill was read the third time as amended, and passed.

The Senate proceeded in reading the papers communicated with the Message of the President of the United States of the 22d instant; and, on motion adjourned.

THURSDAY, March 24.

The Senate proceeded in the reading of the papers communicated with the Message of the President of the United States of the 22d instant; after which the Senate adjourned.

FRIDAY, March 25.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I now lay before Congress a statement of the militia of the United States, according to the latest returns received by the Department of War. From the State of Delaware alone no return has ever been made.

TH. JEFFERSON.

MARCH 25, 1808.

The Message and statement were read, and ordered to lie for consideration.

The following Message was also communicated from the PRESIDENT:

To the Senate and House of Representatives of the United States:

I transmit to both Houses of Congress a report from the Surveyor of the Public Buildings, of the progress made on them during the last season, of their present state, and of that of the funds appropriated to them. These have been much exceeded by the cost of

the work done, a fact not known to me till the close of the season. The circumstances from which it arose are stated in the report of the Surveyor.

MARCH 25, 1808. TH. JEFFERSON.

The Message, and report were read, and ordered to lie for consideration.

Another Message was received from the PRESIDENT OF THE UNITED STATES, as follows:

To the Senate and House of
Representatives of the United States:

In proceeding to carry into execution the act for fortifying our ports and harbors, it is found that the sites most advantageous for their defence, and sometimes the only sites competent to that defence, are, in some cases, the property of minors, incapable of giving a valid consent to their alienation, in others belong to persons who may refuse altogether to alienate, or demand a compensation far beyond the liberal justice allowable in such cases. From these causes the defence of our seaboard, so necessary to be pressed during the present season, will, in various parts, be defeated, unless a remedy can be applied. With a view to this, I submit the case to the consideration of Congress, who, estimating its importance, and reviewing the powers vested in them by the Constitution, combined with the amendment providing that private property shall not be taken for public use without just compensation, will decide on the mode proper to be pursued.

I am aware that, as the consent of the Legislature of the State to the purchase of the site may not, in some instances, have been previously obtained, exclusive legislation cannot be exercised therein by Congress until that consent is given. But, in the meantime, it will be held under the same laws which protect the property of the United States, in the same State; and the Legislatures, at their next meetings, will have opportunities of doing what will be so evidently called for by the particular interests of their own State.

MARCH 25, 1808. TH. JEFFERSON.

The Message was read, and referred to Messrs. SMITH of Maryland, ADAMS, ANDERSON, MITCHILL, and SUMTER, to consider and report thereon.

The bill, entitled "An act further to prolong the continuance of the Mint at Philadelphia, was read the third time, and passed.

The Senate took into consideration the amendments reported by the select committee, to the bill, entitled "An act authorizing the sale of public arms," and, after progress, it was agreed that the consideration thereof be further postponed.

The following motion was submitted by Mr. SMITH, of Maryland, for consideration:

"That a committee be appointed to direct the printing of the papers referred to in the Message of the President of the United States, of the 22d instant, in such order as they may deem proper."

The Senate proceeded in reading the papers communicated with the Message of the President of the United States, of the 22d instant; after which the Senate adjourned.

SATURDAY, March 26.

The following motion, by Mr. FRANKLIN, was submitted for consideration:

Resolved, That a committee be appointed, to join such committee as the House of Representatives may appoint on their part, to consider and arrange the printing of the documents communicated to the two Houses of Congress by the President of the United States, on the 22d day of March, 1808.

On motion, by Mr. ANDERSON,

Ordered, That five hundred additional copies of the Message of the President of the United States, of the 22d March, 1808, and papers numbered 1, 2, and 3, therein referred to, be printed for the use of the Senate.

The Senate proceeded, in the reading of the papers communicated with the Message of the President of the United States, of the 22d instant; after which the Senate adjourned.

MONDAY, March 28.

The Senate considered and agreed to the motion made on the 25th instant, as follows:

Resolved, That a committee be appointed to direct the printing of the papers referred to in the Message of the President of the United States, of the 22d of March, in such order as they may deem proper; and

Ordered, That Messrs. SMITH of Maryland, ADAMS, and MITCHILL, be the committee.

Mr. SMITH of Maryland, from the committee appointed the 18th instant, to consider the Message of the President of the United States, of that date, on the subject, reported a bill in relation to the Military Academy of the United States; which was read, and ordered to a second reading.

The Senate resumed, as in Committee of the Whole, the consideration of the amendments reported by the select committee to the bill, entitled "An act authorizing the sale of public arms;" and the President reported the bill to the House amended accordingly.

Ordered, That it pass to the third reading, as amended.

Mr. GREGG reported, from the committee, the amendments to the bill last mentioned correctly engrossed; and the bill was, by unanimous consent, read the third time, and passed as amended.

The Senate resumed, as in Committee of the Whole, the second reading of the bill making provision for the disposal of the public lands of the United States, in the State of Tennessee, and for other purposes; and a further amendment was submitted by Mr. FRANKLIN; and, on motion, the consideration of the bill was further postponed until to-morrow.

On motion, it was agreed that the bill for the punishment of certain crimes and offences against the United States be the order of the day for to-morrow.

The Senate finished reading the papers communicated with the Message of the President of the United States of the 22d instant; and then adjourned.

TUESDAY, March 29.

Mr. GILES, from the committee to whom the subject was referred, on the 18th of February last,

reported a bill regulating the proceedings in issuing and executing the writ of habeas corpus, for the purpose of inquiring into causes of commitment; and the bill was read, and ordered to the second reading.

The bill, in relation to the Military Academy of the United States, was read the second time, and the further consideration thereof postponed until to-morrow.

Ordered, That the consideration of the bill, entitled "An act concerning courts martial and courts of inquiry," with the amendments reported, be postponed until to-morrow.

Mr. GREGG, from the committee to whom was referred the petition of Arthur St. Clair, made report; which was read, and ordered to lie for consideration.

The Senate resumed the second reading of the bill making provision for the disposal of the public lands of the United States, in the State of Tennessee, and for other purposes," together with the amendments proposed; and, on motion, the bill and amendments were recommitted to the original committee, further to consider and report thereon, and Messrs. CRAWFORD and FRANKLIN were added to the committee.

The bill authorizing the issuing of debentures, in the cases therein mentioned, was read the third time, and it was agreed that the further consideration thereof be the order of the day for to-morrow.

The Senate resumed the second reading of the bill for the punishment of treason and other crimes and offences against the United States; and the bill having been further amended, on the question, Shall this bill be engrossed and read a third time? it was determined in the affirmative.

WEDNESDAY, March 30.

Mr. GREGG, from the committee, reported the bill for the punishment of treason and other crimes and offences against the United States, correctly engrossed.

The bill regulating the proceedings in issuing and executing the writ of habeas corpus, for the purpose of inquiring into causes of commitment, was read the second time.

The Senate resumed, as in Committee of the Whole, the consideration of the amendments reported by the select committee to the bill, entitled "An act concerning courts martial and courts of inquiry;" and, after progress, the consideration thereof was further postponed until to-morrow.

THURSDAY, March 31.

The motion submitted by Mr. BRADLEY, the 17th instant, was resumed. Whereupon,

Resolved, That a committee be appointed, to join such committee as the House of Representatives may appoint on their part, to consider and report what business is necessary to be done by Congress in the present session, and when it may be expedient to close the same;" and Messrs. BRADLEY and GREGG were appointed the committee on the part of the Senate.

The Senate resumed the third reading of the bill authorizing the issuing of debentures in the cases therein mentioned; and, on motion by Mr. BRADLEY, that the further consideration of this bill be postponed until the first Monday in December next, it was determined in the affirmative—yeas 15, nays 14, as follows:

YEAS—Messrs. Anderson, Bradley, Condit, Crawford, Franklin, Gaillard, Howland, Kitchel, Maclay, Milledge, Pope, Robinson, Smith of Tennessee, Sumter, and Turner.

NAYS—Messrs. Adams, Bayard, Giles, Gilman, Goodrich, Gregg, Hillhouse, Mathewson, Mitchill, Pickering, Smith of Maryland, Smith of New York, Thruston, and White.

FRIDAY, April 1.

Mr. GILES, from the committee to whom was recommitted, on the 18th of March last, the bill, entitled "An act concerning public contracts," reported it with a further amendment; and the report was read for consideration.

Mr. SMITH of Maryland, from the committee appointed the 28th of March last on the subject, made report. Whereupon,

Resolved, That one thousand copies of the papers respecting the French affairs, communicated with the Message of the President of the United States of the 22d ultimo, be printed for the use of the Senate; and that three hundred copies of all the other papers (not confidential) referred to in the said Message, be also printed for the use of the Senate.

The following motion was submitted, by Mr. ANDERSON, for consideration:

Resolved, That the correspondence between Mr. Monroe and Mr. Canning, and between Mr. Madison and Mr. Rose, relative to the attack made upon the frigate Chesapeake by the British ship of war Leopard; and, also, the communication made to the Senate by the President on the 30th day of March last, be referred to a select committee, with leave to report thereon by bill or otherwise.

CASE OF JOHN SMITH.

This being the day assigned for hearing counsel, the PRESIDENT said the Senate were ready to hear the counsel of JOHN SMITH, in anything they had to offer why the resolution (for expelling him) should not be adopted.

Mr. ADAMS submitted it to the Senate, whether it was not most proper that the counsel should be permitted to show cause, why the report should not be adopted. He remarked that in like cases the whole report, comprising the grounds on which the final resolution was founded, had been the subject of discussion, and of approbation or rejection. He considered this the correct course, that the world and posterity might know the grounds on which the Senate acted.

A short conversation ensued on this suggestion of Mr. ADAMS, in which the principles of the report were incidentally noticed. In reply to Mr. ADAMS's remarks, it was said that it could not be expected that a deliberative body, however agreed in the guilt or innocence of the accused, would be

able to unite in their agreement to a complicated report, embracing a variety of abstract and disputable principles.

Mr. GILES intimated the idea that this discussion was premature; that, as the Senate had by their vote determined to hear counsel on the report, it was proper that this course should, in the present stage of the business, be pursued. After having heard counsel, it would be for the Senate, as they then should see fit, either to decide on the resolution alone, or on the report connected with it.

This suggestion having been acquiesced in, without any vote——

Mr. KEY, of counsel for Mr. SMITH, asked for subpœnas for Messrs. DAVENPORT, MORROW, and STURGES, of the House of Representatives, to attest the credibility of witnesses; and likewise for a subpœna for General Wilkinson.

It was intimated that the usual mode of proceeding in such a case was to request the attendance of the members of the other House.

Mr. KEY then opened the defence by a few very concise preliminary remarks. He observed that the counsel of Mr. SMITH felt highly gratified in appearing before the Senate with a body of testimony sufficiently strong to flatter them with the assurance of a favorable result; that all the apprehensions which had arisen from the distance and the extent of the testimony were almost removed; and that although testimony was still coming in, they were fully satisfied with that they had already received.

He said they would be able to show that the testimony of Elias Glover was not worthy of credit. He admitted that if this testimony were correct, JOHN SMITH was unworthy of his seat; but they would be able entirely to destroy its weight by destroying his credibility. They would, likewise, be able to show that there was nothing else in the other testimony which materially affected the character of the accused. They would also, after this, enter into a consideration of the principles on which a decision in this case ought to be made; and endeavor to show that that decision could only be made according to legal evidence; that the Senate were bound by judicial principles, and that the accused was consequently entitled to the same privileges as he would be in a court of justice.

Mr. KEY said he should first proceed to offer depositions to discredit Elias Glover. He would show that he had not only made charges, which were contradicted by respectable testimony, but likewise by his own declarations at other times. He would commence with the proof of his general character, and show that it had been such, ever since he entered into life, as to destroy the weight of his testimony; he would show that he had in several instances perjured himself. He would then show his inducements to perjure himself in this case, by establishing the existence of a combination, of which he was the head, to ruin Mr. SMITH.

Mr. KEY was about to read sundry depositions taken at Newtown, Connecticut. Previous to this he read the certificates of notice given by Mr. SMITH to Mr. Glover, of his purpose to take depositions relative to his character. From these it appeared that Mr. SMITH had, on the 10th of February, notified him of his intention to take depositions at Delhi, New York, on the 15th February, at Newtown, Connecticut, on the 20th, in the Mississippi Territory on the 25th, at Cincinnati the——

Mr. CRAWFORD objected to reading these depositions. He observed that they went seriously to affect the character of Mr. Glover; that the Senate had, in such a case, prescribed that the depositions should only be received in case of reasonable notice having been given to the person, whose character it was intended to discredit: that in this case no such reasonable notice had been allowed; that the notice was too short to be of the least use to Mr. Glover.

Mr. HARPER, of counsel for Mr. SMITH, observed that as much time had been given by Mr. SMITH as he could possibly spare. The times fixed for taking depositions at the several places, had been as distant as they could be, consistently with Mr. SMITH'S getting the testimony forwarded to the seat of Government by the 1st of March; the period then fixed by the Senate for his hearing.

Mr. S. SMITH stated that, although the resolution fixing the 1st of March for a hearing had passed on the 20th of January, the notices of Mr. SMITH were not dated till the 10th of February, at Berrysville, in Virginia, where he had put them into the post office.

A short debate followed, in which the principal circumstances noticed were, that according to Mr. SMITH'S affidavit, on which the first postponement had taken place, it was not expected that depositions to discredit Elias Glover's would be taken at any other place than Cincinnati; that, if these depositions, though informal, were read, they would be taken by the Senate only for what they were worth, and that, if ex parte evidence was received in favor of Mr. SMITH, it could not be rejected when against him.

On reading the depositions, seventeen members, being a majority, rose in the affirmative.

The counsel then read the depositions of Calvin Chamberlain, Henry Peck, jun., Ely Perry, William Meeker, Daniel Wheeler, John Norfrog, Luther Bulkley, Zalmon Tousy, jun., Cyrus Sprindle. James Nicholls, Solomon Booth, Oliver Tousy, Gideon Fisher, Stephen Beers, jun., N. Hays, Joseph Michin, Solomon M. Sackriden, James Monger, Homer R. Phelps, Joshua H. Brent, Gabriel North, John T. Moore, Philip Gabehart, Cyrenus Foote, Roswell Hodgkiss, Benijah Beardley, E. K. Granger, Henry Tyler, John B. Judson, Samuel Stephen, George Fost, Asa Tyler, Nathan T. Tyler, John S. Gano, Francis Dunlavy, John Sellman, Stephen MacFarland, Geo. Gordon, Edward H. Stall, Thomas N. Still.

These depositions are made by persons residing in the States of Connecticut, New York, and Ohio.

About 4 o'clock the Senate adjourned.

SATURDAY, April 2.

GREAT BRITAIN AND FRANCE.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

Believing that the confidence and union of our fellow-citizens, at the present crisis, will be still further confirmed by the publication of the letter of Mr. Champagny to General Armstrong, and that of Mr. Erskine to the Secretary of State, communicated with my message of the 30th ultimo; and, therefore, that it may be useful to except them from the confidential character of the other documents accompanying that message, I leave to the consideration of Congress the expediency of making them public. TH. JEFFERSON.

APRIL 2, 1808.

The Message was read. Whereupon, on motion, by Mr. GILES, it was

Resolved, That five hundred copies of the foregoing Message, together with five hundred copies of the note from Mr. Erskine, His Britannic Majesty's Minister Plenipotentiary, to Mr. Madison; and also, of the note from Mr. Champagny, Minister of Foreign Relations of His Majesty the Emperor of France, &c., to Mr. Armstrong, communicated to Congress with the Message of the President of the United States on the thirtieth day of March last, be printed for the use of the Senate.

The letters are as follows:

WASHINGTON, *Feb.* 23, 1808.

SIR: I have the honor to transmit to you the copies of certain Orders of Council, which His Majesty has thought proper to issue in consequence of the hostile conduct of France towards the navigation and commerce of Great Britain and of neutral States.

His Majesty has been induced hitherto to forbear recurring to measures of this nature, by the expectation that the Governments of the neutral States, who have been the objects of the French decrees, would have been awakened to a just sense of what they owe to their interests and own rights, and would have interposed with effect, either to prevent the execution of the French decrees, or to procure their abrogation.

But His Majesty having been disappointed in this just expectation, and perceiving that the neutral nations, so far from opposing any effectual resistance, have submitted to whatever regulations France may have prescribed for giving effect to her decrees, can no longer refrain from having recourse to such measures as, by retorting on the enemy the inconveniences and evils produced by his injustice and violence, may afford the only remaining chance of putting an end to a system, the perseverance in which is not more injurious to His Majesty's dominions than to nations not parties to the war between Great Britain and France.

The principle, upon which His Majesty finds himself compelled to proceed, would justify a complete and unqualified retaliation on his part of the system announced and acted upon by France, in respect to His Majesty's dominions: and His Majesty might, therefore, have declared in a state of rigorous and unmitigated blockade, all the coasts and colonies of France and her allies. Such a measure, the maritime power of Great Britain would have enabled His Majesty to enforce; nor would those nations, which have acquiesced, without effectual remonstrance, in the French decree of blockade, have derived any right from the perfect execution of a corresponding determination on the part of His Majesty, to complain of His Majesty's enforcing that measure, which the enemy has executed imperfectly, only from the want of the means of execution.

His Majesty, however, actuated by the same sentiments of moderation by which His Majesty's conduct has been uniformly governed, has been desirous of alleviating, as much as possible, the inconveniences necessarily brought upon neutral nations by a state of things so unfavorable to the commercial intercourse of the world; and has, therefore, anxiously considered what modifications it would be practicable to apply to the principle upon which he is compelled to act, which would not, at the same time that they might afford relief from the pressure of that principle upon neutral or friendly nations, impede or enfeeble its operation upon the enemy.

In pursuance of this desire, the Order in Council, which, if it had ended with the sixth paragraph, would have been no more than a strict and justifiable retaliation for the French decree of November 1806, proceeds, as you will observe, sir, to provide many material exceptions, which are calculated to qualify the operation of the order upon neutral nations in general, but which must be considered as most peculiarly favorable to the particular interests of the United States.

It will not escape you, sir, that by this Order in Council, thus modified and regulated, the direct intercourse of the United States with the colonies of the enemy is unrestrained; an indulgence which, when it is considered to be (as it really is) not only a mitigation of that principle of just reprisal upon which the order itself is framed, but a deviation in favor of the United States, from that ancient and established principle of maritime law, by which the intercourse with the colonies of an enemy in time of war is limited to the extent which that enemy was accustomed in time of peace to prescribe for it, and which, by reference to the conduct of France in a time of peace, would amount to a complete interdiction, cannot fail to afford to the American Government a proof of the amicable disposition of His Majesty towards the United States.

You will observe, sir, also, that the transportation of the colonial produce of the enemy from the United States to Europe, instead of being altogether prohibited (which would have been the natural retaliation for the rigorous and universal prohibition of the British produce and manufactures by France) is freely permitted to the ports of Great Britain, with the power of subsequently re-exporting it to any part of Europe, under certain regulations.

The object of these regulations will be the establishment of such a protecting duty, as shall prevent the enemy from obtaining the produce of his own colonies at a cheaper rate than that of the colonies of Great Britain. In this duty it is evident that America is no otherwise concerned than as being to make an advance to that amount for which it is in her own power amply to indemnify herself at the expense of the foreign consumer.

Another most important relaxation of the principles upon which His Majesty's orders proceed, is that which licenses the importation of all flour and meal, and all grains, tobacco and other articles, the produce of the soil of America, with the exception of cotton, through the ports of His Majesty's dominions, into those of his

enemies, without the payment of any duty on the transit. This is, I beg leave to observe, an instance in which His Majesty has deprived his measure of its most efficacious and hurtful operation against the enemy, through motives of consideration for the interests of America. The reason why His Majesty could not feel himself at liberty, consistent with what was necessary for the execution of his purpose, in any tolerable degree, to allow this relaxation to apply to cotton, is to be found in the great extent to which France has pushed the manufacture of that article, and the consequent embarrassment which a heavy impost upon cotton, as it passes through Great Britain to France, must necessarily produce.

I cannot refrain from calling the attention of the Government of the United States to the contrast between the different modes in which His Majesty's orders and those of France are carried into execution. By His Majesty's, the utmost consideration is manifested for the interests of those nations whose commerce he is reluctantly compelled to impede, and ample time allowed for their becoming acquainted with the new regulations and conforming to them. Whereas France, without any previous notice, and without any interval, applies her orders to trade already entered upon, in ignorance of any such orders, and subjects to condemnation ships, whose voyages, when commenced, were in strict conformity to all the regulations at that time promulgated by France.

Even with these and other modifications, His Majesty is not unaware that a measure extorted from him by the injustice of the enemy, must inevitably produce inconveniences to the neutral parties who are affected by its operation.

The right of His Majesty to resort to retaliation cannot be questioned. The suffering occasioned to neutral parties is incidental, and not of His Majesty's seeking.

In the exercise of this undoubted right, His Majesty has studiously endeavored to avoid aggravating unnecessarily the inconveniences suffered by the neutrals. And I am commanded by His Majesty, especially, to represent to the Government of the United States, the earnest desire of His Majesty, to see the commerce of the world restored once more to that freedom which is necessary for its prosperity; and his readiness to abandon the system which has been forced upon him, whenever the enemy shall retract the principles which have rendered it necessary; but His Majesty entertains the conviction, upon which alone his present measures are founded, that it would be vain to hope for such a retraction, until the enemy shall himself have been made to feel a portion of the evils which he has endeavored to inflict upon others.

I have the honor to be, with great consideration and respect, sir, your most obedient, humble servant.

D. M. ERSKINE.

Hon. JAMES MADISON, *Sec'ry of State.*

Translation of a letter from M. CHAMPAGNY, *to Gen.* ARMSTRONG, *dated Paris, Jan.* 15, 1808.

SIR: The different notes you have done me the honor to address to me have been laid before His Majesty.

The proceedings of England towards all Governments are so contrary to the law of nations, and to all the rules constantly observed even among enemies, that no recourse against this Power is any longer to be found in the ordinary means of repression. In order to annoy her, it is become necessary to turn against her the arms which she makes use of herself; and if transient inconveniences result therefrom, it is to her alone, they are to be imputed. Since England respects no laws, how could they be respected with regard to her? The maritime laws which she violates, ought they still to be a protection to her? And if some Powers tolerate the infraction committed on their independence, could they have the right to require that France alone should restrain herself within limits which her enemy has everywhere overleaped?

The United States, more than any other Power, have to complain of the aggressions of England. It has not been enough for her to offend against the independence of her flag, nay, against that of their territory, and of their inhabitants, by attacking them even in their ports, by forcibly carrying away their crews; her decrees of the 11th November have made a fresh attack on their commerce, and on their navigation, as they have done on those of all other Powers.

In the situation in which England has placed the continent, especially since her decrees of the 11th of November, His Majesty has no doubt of a declaration of war against her by the United States. Whatever transient sacrifices war may occasion, they will not believe it consistent either with their interest or dignity to acknowledge the monstrous principle, and the anarchy which that Government wishes to establish on the seas. If it be useful, and honorable for all nations to cause the true maritime law of nations to be re-established, and to avenge the insults committed by England against every flag, it is indispensable for the United States, who, from the extent of their commerce, have oftener to complain of those violations. War exists, in fact between England and the United States; and His Majesty considers it as declared, from the day in which England published her decrees. In that persuasion His Majesty, ready to consider the United States as associated with the cause of all the Powers, who have to defend themselves against England, has not taken any definitive measure towards the American vessels which may have been brought into our ports. He has ordered that they should remain sequestered, until a decision may be had thereon, according to the dispositions which shall have been expressed by the Government of the United States.

CASE OF JOHN SMITH.

The Senate resumed the consideration of the first report of the committee appointed to inquire into the conduct of JOHN SMITH, a Senator from the State of Ohio, as an alleged associate of Aaron Burr. Messrs. Harper and Key, his counsel, attended.

The following motion was submitted, by Mr. MILLEDGE, for consideration:

Resolved, That a message be sent to the House of Representatives requesting that Messrs. Sturges, Davenport, and Jeremiah Morrow, members of that House, be permitted to attend the Senate, to give evidence to the characters of sundry witnesses in the case of John Smith, a Senator from the State of Ohio.

Mr. KEY proceeded with the testimony on the part of Mr. SMITH, and read the depositions of Thomas Rawlings, Jacob Fouble, Wm. McFarlane, Richard Southgate, Ethan Stone, Samuel I. Brown, Pallas P. Stewart, D. L. Kearney, Ephraim Morgan, Jacob Burnett, Arthur St. Clair, jr., George Russell, Nathaniel Nicholls, John Arm-

strong, Isaac G. Burnett, Nicholas Longworth, James Laurie, B. Chambers, Stephen McFarland, Griffin Yeatman, and Barnet Hulings, to discredit the testimony of Elias Glover.

Mr. HARPER, then, in order to present a connected view of the whole testimony, read the depositions of Peter Northrop, Nathan Platt, G. Somers, Henry Bottsworth, Philip Nichols, Josiah Fairchild, Sampson Burch, Jonathan Goodsall, Timothy Shepherd, Bennet Perry, Henry Foote, Gideon Boxford, Michael Parks, Samuel Beers, Moses Boxford, Mox K. Boxford, Asa Chapman, Amos Beers, Truman Beers, David Beers, David B. Beers, John Bennet, G. Hansford, Henry Rice, Josiah Hansford, Benjamin Hall, R. Griffin, —— Watkins, Wm. Watkins, Joshua Webster, John C. Hodgkiss, Wm. Andrews, and R. Baldwin, in support of the character of Elias Glover.

Mr. KEY said he would, in the next place, proceed to adduce evidence relative to the affidavit of Peter Taylor. Although the counsel, he said, of Mr. SMITH, did not consider the evidence of Peter Taylor, of Col. James Taylor, and others, as proving anything material against Mr. SMITH, yet they would be able to show that it abounded with mistakes. With regard to Peter Taylor, they should not question his general character, but they would offer evidence to show that the circumstances and situation in which he was placed were not such as entitled his testimony to credit; they would show that he had testified to what were not facts. They should prove this by his own declarations, as well as by those of others.

Mr. K. then read the deposition of Peter Taylor, lately taken at Marietta, and the depositions of Dudley Woodbridge, John Brough, and Morris P. Belknap.

Mr. HARPER said, that among the charges preferred against JOHN SMITH, was his having expressed to Colonel Taylor sentiments unfavorable to the Union. Although they might contend that such a charge, if substantiated, contained nothing of criminality, they were not disposed to rest the defence on that ground. They denied the charge. In saying this, they did not believe that Colonel Taylor had intentionally misstated the expressions of Mr. SMITH; they would, however, adduce the testimony of a man who was present at the conversation alluded to, who considered it very differently from Colonel Taylor, viz: Doctor John Sellman, a man of respectable character, both as to veracity and knowledge.

He then read the depositions of Doctor John Sellman and General Henry Carberry.

The last point, Mr. H. said, on which they would adduce testimony, was relative to the journey of Mr. SMITH to Frankfort, where he had an interview with Colonel Burr; and they would show that his objects and motives in taking it, altogether regarded the transaction of his own personal concerns.

The counsel then read the depositions of Joseph Taylor, John Jordan, jr., Thomas Hart, Daniel Bradley, Alexander Parker, and James Kelly.

Adjourned to Monday.

MONDAY, April 4.

The Senate took into consideration the motion made by Mr. ANDERSON on the first instant, and which was adopted, as follows:

Resolved, That the correspondence between Mr. Monroe and Mr. Canning, and between Mr. Madison and Mr. Rose, relative to the attack made upon the frigate Chesapeake, by the British ship of war Leopard; and, also, the communications made to the Senate by the President of the United States on the 30th day of March last, be referred to a select committee, with leave to report thereon by bill or otherwise.

Ordered, That Messrs. ANDERSON, ADAMS, GILES, SMITH, of Maryland, and BRADLEY, be the committee.

The bill for the punishment of treason, and other crimes and offences against the United States, was postponed until to-morrow.

Ordered, That the consideration of the bill, entitled "An act concerning courts martial and courts of inquiry," be further postponed until to-morrow.

Mr. ADAMS gave notice that he should, to-morrow, ask leave to bring in a bill for the relief of Joseph Summerl, Simon Philipson, William Hamon, Archibald McCall, and Isaac Clason.

CASE OF JOHN SMITH.

The Senate resumed the consideration of the first report of the committee appointed to inquire into the conduct of JOHN SMITH, a Senator from the State of Ohio, as an alleged associate of Aaron Burr.

Mr. SMITH attended, together with Messrs. Harper and Key, counsel on his behalf, who proceeded in reading their depositions.

The depositions transmitted to the Senate, on behalf of Elias Glover, were also read; after which, it was agreed that the further consideration of the report be postponed until to-morrow.

The Senate resumed, as in Committee of the Whole, the report of the select committee on the bill, entitled "An act concerning public contracts;" and, after progress, the Senate adjourned.

TUESDAY, April 5.

Mr. ANDERSON, from the committee to whom was referred the bill making provision for the disposal of the public lands of the United States in the State of Tennessee, reported it with further amendments; which were read for consideration.

CASE OF JOHN SMITH.

The Senate resumed the consideration of the first report of the committee appointed to inquire into the conduct of JOHN SMITH, a Senator from the State of Ohio, as an alleged associate of Aaron Burr.

Mr. SMITH attended, together with Messrs. Harper and Key, counsel on his behalf.

Mr. HARPER read the depositions of Joseph H. Brett, John T. Moore, Gabriel North, Erastus Root, C. Keiser, Isaac G. Burnett, David Zeigler, John Bradford, Jacob Broadwell, Jos. Van Horne, Samuel Hildige, Geo. Williamson, M. Williams, and William Goforth. Messrs. Van Rensselaer,

Jeremiah Morrow, Tallmadge, Bacon, and Davenport, of the House of Representatives, and Mr. Tiffin, of the Senate, were then examined, and attested to the general respectability of character of several of the witnesses from whom depositions had been received on the part of Mr. SMITH.

Mr. KEY then rose to show why the report of the Committee should not be adopted. He spoke as follows:

Mr. President: In the discharge of that duty to which we are now called by the permission of this honorable body, nothing could have been more gratifying than to have waived all objections to this proceeding or any of its forms; to have presented our evidence and rested our defence upon the unanswerable proofs which it contains. We could have wished to have trespassed no otherwise upon the attention of the Senate than by contrasting the purity, truth, and respectability of that evidence, with the foulness, falsehood, and infamy, of those to which the present accusation owes its origin and support. Were the principles which have always heretofore governed legislative and judicial assemblies in the investigation of facts admitted to their just and usual rank on this occasion, was the Senate to be guided by its own former decisions, or by those of every other intelligent tribunal, this would have been the course which we would most gladly have pursued.

But, sir, these principles are denied, and the force of these precedents attacked in the report which the Senate are now called upon to adopt, with a zeal and ability which we cannot hope successfully to resist; and new principles and a new mode of proceeding are recommended, by which we cannot consent to be tried; which, we humbly conceive, render innocence, nay, even the proof of innocence, an unavailing defence.

It is therefore, sir, that we feel ourselves most reluctantly compelled to protest against this inquiry; to plead to the jurisdiction of the Senate, and to deny the obligation of answering to this charge in any manner and any place, where those rights of defence which justice, law, and established custom, entitle us to, are refused or doubted.

I shall therefore contend, that the Senate have no right to inquire into the truth of a charge which is indictable in a court of law. And I will undertake to prove this, by resorting to the same sources from which a contrary conclusion is attempted to be drawn in this report;—the commands of the Constitution; the dictates of reason, and the sanction of precedents.

The seventh amendatory article of the Constitution directs "that no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except," &c. If it is said that this restriction relates merely to the judiciary, I ask why are certain cases contained in the exception which could not in their nature have the least connexion with judicial proceedings? Why are cases in the army or navy excepted? If a soldier could not have been held to answer for a capital offence, but for the exception contained in this article, can one of the members of this House, unless a similar exception is shown? If it would not have been sufficient, in order to try such a case, otherwise than by indictment, to say that this article related only to judicial cases, so neither can the Senate give themselves jurisdiction in this case by adopting this construction.

But, sir, the following article is still more conclusive. "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed."

Let me ask, if this privilege, thus expressly secured by the most positive terms, is not violated by a proceeding like this? The member accused of an indictable offence may, and most probably always will be indicted; he has a right to a speedy trial. Can the Senate have the power to deny him this right, by instituting an inquiry either before or just after he is indicted, and thus delaying the trial until they have procured the testimony of witnesses, and decided upon the accusation? Such a delay would be unavoidable and considerable, where the offence was committed at a distance, and thus the accused is deprived of his Constitutional right to a speedy trial. But what is of yet more importance to him, he is denied the right of a trial by an impartial jury. For, when this House has declared, after a deliberate investigation, that he is guilty, what jury would be unprejudiced by such a decision? Or, if they declare him innocent, will any jury be likely to convict him upon the same testimony? Thus, in either case, he will not have a trial by an impartial jury.

But, sir, if these injunctions of the Constitution can by any ingenuity be evaded, what answer can be given to those which are dictated by the equally authoritative voice of reason?

In the first place, such proceedings here are unnecessary, and, if unnecessary, surely unreasonable for this House and (more particularly from their numbers) the other branch of our National Legislature may, if these inquiries are sanctioned, be called on repeatedly during a session to institute similar proceedings. When we consider the feelings which are excited by a warmly contested election, and the resentments of disappointed candidates, it is by no means improbable that many such cases will occur in both Houses. Let the time and attention which this has occupied, (and surely there has been no unnecessary delay) be considered, and it will be obvious that nothing but the most imperious necessity can justify the Legislature in neglecting (as they manifestly must do) the various and important national concerns which are pressing upon them, and overlooking the interests of the country, in their search after the crimes of each other—crimes too, sir, which are cognizable and punishable elsewhere; which it is the peculiar and exclusive duty of our courts to pronounce upon; which they can always pronounce upon in less time, for they sit more frequently; with less inconvenience, for they have nothing else to do, and I may add with equal justice; for this honorable House must sanction the characters selected to fill them. When they have thus pronounced, their record can be enrolled in

this House, and if it contains a member whose guilt is declared by that record, nothing else will be necessary to remove the pollution.

The necessity, however, of this interference by the Senate, between the accusation and the sentence of guilt, is warmly urged in the report of the honorable committee. It is there contended that the Senate are compelled to assume the jurisdiction and discharge the duties of a court, because those duties are neglected and violated by our courts.

Yes, sir, we are told that our judicial tribunals not only allow to notorious offenders impunity for years, but that when a criminal is arrested and brought before them for trial, instead of ascertaining his guilt or innocence, they amuse themselves and him by inquiring into the "possibility of his innocence." Whether this be a correct representation; whether the counsel for a criminal may plead to an indictment "that he is possibly innocent," without any danger of the district attorney's demurrer or the ridicule of the court; whether our judges be thus negligent, corrupt, and foolish beyond all former example, I shall not pretend to inquire. But admitting it, how strange is the conclusion drawn from it! The judiciary is depraved; they disregard their duties, and therefore it is urged, that the legislative department should disregard their own duties to perform those of the judiciary. If, sir, this is the degraded condition of our courts, it is within the power, and it is the duty of this honorable House to restore purity and vigor to that department, not by assuming judicial functions, but by the exercise of its legitimate legislative authority. Let them frame a law compelling courts to do their duty; obliging them to catch offenders in a reasonable time, and to punish such as are guilty, notwithstanding they may be "possibly innocent."

Thus, sir, no actual or fancied depravity in our judicial tribunals can impose on this House the necessity of inquiring into indictable offences committed by its members. And not only is it unnecessary, but most oppressive and unjust. I can conceive nothing more injurious to a person accused of a crime than to have the public, from whom his jury are to be selected, prejudiced against him. There is little difference between punishing a man without a trial and destroying the purity of that trial. Let me ask if any honorable member of this House can reconcile it to his reason and sense of justice to express a public opinion of the guilt of a person about to be tried for an offence? And if he would feel this restraint as an individual, let me now urge him to forbear from throwing the weight of his authority, and of the high official station which he bears, into those scales of justice which should be most accurately balanced and held with the most even and steady hand. The offence charged upon Mr. Smith is confessedly indictable. Though the malice of his enemies has been lately foiled in its attempt to procure a prosecution against him at Chilicothe, though that grand jury disbelieved his slanderers, yet even in this case he may be subjected to answer to an indictment for this offence. If this should happen, can it be pretended that a laborious investigation and a solemn decision of the Senate of the United States will be without its influence upon that fair and impartial trial which is his right? Will the court and the jury feel no prejudice against him whose crime has been publicly ascertained and declared by so high an authority? The most innocent man alive could expect nothing but the confirmation of that sentence. The slightest circumstance would in such a trial be considered as conclusive proof—the most infamous witness thought worthy of credit—for where would he be disbelieved who had been listened to here? I should not be, sir, without my apprehensions that even the ghost of Elias Glover's departed reputation might be conjured up by the magic of a vote of this House, might stalk into a court of justice restored to its capacity of mischief, and armed with the recommendations of the Senate of the United States. I might even feel afraid of this shadow.

To these self-evident dictates of reason, thus concurring with the opinion of our Constitution, allow me now to add the resistless force of the most deliberate and respectable precedents. These, sir, will show that the principle for which we now contend has already received the solemn sanction of the Senate. The case of Mr. Marshall is precisely similar to the present. This gentleman, while a member of this House, was accused of perjury, and an inquiry into his conduct solicited. A committee, highly respectable for talents, was appointed, as in this instance; and their report is now among the records of this House. This report avows in the most unequivocal language (as will be seen by reference to it) that the Senate had no jurisdiction; that the offence was cognizable in a court, and therefore could not be inquired into here; and the Senate, by a very large majority, concurred with this report. The weight of this decision, so confessedly in point, is now most ingeniously resisted in the present report. It is said to have been adopted without due consideration, and afterwards departed from, at the very next session, in the case of Blount. There are no marks of haste or prejudice to be discovered in the conduct of the Senate on that occasion; no reason to suppose that they acted without that discernment and deliberation which should always attend the proceedings of this House. The accusation was presented by the Legislature of Kentucky, a source entitled to respect and consideration. Nor could they have been prejudiced in favor of their associate, for he was anxious to waive all objections to their jurisdiction. It would indeed be strange that the very individuals who voted for this report should so soon afterwards have sanctioned a directly contrary one—and though it is contended by the present honorable committee that they have done so, I yet hope to acquit them from a charge of such gross inconsistency.

The decision in the case of Blount, instead of being contradictory of any principle established by the case of Marshall, is in the strictest conformity with it—they are perfectly reconcilable, and mutually strengthen each other, and both enforce

the principle I am now contending for. The offence with which Mr. Marshall was charged was perjury, an indictable offence. That alleged against Mr. Blount was the writing a letter, certainly highly improper and reprehensible, but for which it cannot be pretended that he was liable to indictment. This at once explains the grounds of these two decisions. In one case the Senate saw that our courts had cognizance of the offence; that, if guilty, a conviction there could be produced as the ground of expulsion; they therefore decided that they could not inquire. In the other case, the member was subject to no prosecution, and they therefore with equal propriety and perfect consistency determined to inquire. Thus, sir, the authority in the case of Marshall is unimpeached by that of Blount, nay, they both concur to deny the correctness of such a proceeding as the present, where the offence charged is indictable.

These, sir, are the only instances which have occurred in this country—and I shall not think it necessary to refer to the precedents of any other, to support a principle which has received so solemn and deliberate a decision here. Yet, if those of England are resorted to, they will be found consistent with them, except on one occasion, in which prejudice and intemperance evidently operated. I allude to the case of Wilkes, the proceeding in which case was declared at the time to be unprecedented, and is now almost universally allowed to have been unjust. I do not suppose that the authority of this case can be held up as superior to that of decisions here, and will therefore make no attempt to show the impropriety of that proceeding, and that even if justifiable there, there could be no pretence or excuse for introducing such a precedent in our country. I have now, sir, endeavored to show from the Constitution, from reason, and from precedent, that the Senate are forbidden to proceed in this inquiry.

But, sir, if I have been unsuccessful in this attempt; if the Senate do proceed; if Mr. SMITH'S guilt or innocence is to be established without a trial in a court of justice; let me at least hope that he will be tried as if he was in a court of justice, and that none of the substantial benefits allowed in judicial investigations will be denied him here. This honorable House, sir, are not now sitting in their usual deliberative capacity: this is no question of expediency. The moment this inquiry was instituted, every such question was waived, and this House became, to all intents and purposes, a judicial tribunal. For, what is that but a judicial tribunal which investigates a criminal accusation, and forms and pronounces a judgment upon its truth? However different, then, the forms of this proceeding may be from those usually adopted in judicial tribunals, let me at least hope that we shall find the substance the same. But this, sir, the present report of the honorable committee forbids us to expect. The principles which always regulate judicial tribunals are denied to be authoritative here; and it is therefore urged that the depositions of witnesses with whom the accused has never been confronted—to whom he has never been permitted to put a question—should be received as evidence against him. Nay, the most fundamental principle in criminal inquiries; the most obvious dictate of justice—that which presumes innocence till guilt is proved—is now advised, (I humbly apprehend for the first time,) not only to be dispensed with, but to be reversed. And why, sir, should the Senate, when acting as a judicial tribunal, thus disdain to resort to judicial principles and precedents? Does not the source whence they were derived deserve a respectful consideration? The situation of our country; the security which every man feels in the enjoyment of all his rights and possessions; that quiet and repose which is everywhere visible, constitute the best panegyric upon our civil tribunals, and is an unanswerable proof of the purity and respectability with which they are filled—of the fidelity and ability and wisdom with which their duties are discharged. And if we look to the tribunals of that country from which our system of jurisprudence has been so wisely borrowed, we shall find them everyway worthy of our regard and admiration. I do not, I think, speak from any professional prejudices, when I affirm that the judicial department of that Government has always displayed the most marked superiority over every other. In times of the greatest political depravity, when every other branch of their civil institutions was stained with pollution, into the sanctuary of their courts corruption did not dare to enter; and a profligate Ministry, as their history will show, have always found it cheaper and easier to purchase a whole Parliament than a single judge. Nor, sir, can it justly be said that those principles, thus selected by intelligent men for the promotion of justice, and matured and perfected by the wisdom and experience of successive ages, are either unreasonable in themselves or inapplicable to the present occasion. If the presumption in favor of the innocence of an accused person is universally and properly allowed—if it operates in favor of the meanest vagrant indicted for the most petty offence, the punishment of which is merely to subject him to confinement in a comfortable jail, or a few stripes upon a back already hardened by the lash—under what pretence can it be denied in the present inquiry, when an honorable member of this House, the purity of whose past life has procured him this high mark of confidence from his fellow-citizens, is about to be tried for the most odious offence, and doomed to the most ignominious punishment? And what, sir, can be alleged against the justice of that great rule of evidence which brings a man's accusers from that secrecy which falsehood will always seek, commands them to stand before his face, to submit to his examination, and to bear the keen searchings of the eyes of the beholders? Can it possibly be thought more consistent with justice to dispense with this rule, and introduce a mode of proceeding which is to give the name and effect of evidence to *ex parte* depositions, taken not only without any notice to the accused, but in the most secret and concealed manner, for the very purpose of preventing him from having any knowledge of them? There are, sir, depositions upon your table of the contents of which, and even of the names

of the deponents, neither the accused nor his counsel had the slightest information till they were yesterday read as evidence against him. And these deponents too, sir, are many of them the very persons who (as Mr. SMITH has proved) were called upon by him to ascertain certain facts in his defence, and who refused to attend or to answer any of his inquiries. Against these new slanders, sir, what opportunity has the accused had of defending himself? Can he be expected to produce testimony from Ohio to-day to disprove facts or to discredit witnesses which he never heard of till yesterday? Permit me, sir, to call the attention of the Senate to one circumstance which has taken place in this inquiry, which proves, more strongly than any arguments I can urge, the flagrant impropriety of considering such information as testimony. When the deposition of Elias Glover was first read in the Senate, and a summary proceeding was urged, this witness was no doubt believed; and had a decision taken place before Mr. Smith could have produced testimony to discredit him, his guilt would have been declared and his disgrace effected by a paper which is now rendered as perfectly harmless as if it had never been stained by falsehood. Will the Senate then receive proof taken under similar circumstances, and again run the risk of doing an act of injustice which they had before so happily escaped?

Here, sir, the case of Blount has been again introduced, and it is stated that the Senate on that occasion departed from the ordinary rules of evidence, and acted upon such as a criminal tribunal would have declared inadmissible. We are most willing, sir, to submit to this precedent, we consider its authority most respectable, and earnestly solicit that the principles there established may regulate the present proceeding.

What, then, is the evidence which the Senate received in the case of Blount, and which a court would have rejected? The report informs us, and so was the fact, that the Senate acted upon the "production of the original letter and proof of Mr. Blount's handwriting, made by the persons who had seen him write." Instead of this being testimony that a criminal court would have rejected, (as it is stated to be in the report,) it is in my humble apprehension the very evidence, and the only evidence, which such a court would have received.

I should not, sir, thus hazard an opinion in opposition to that advanced by the honorable committee, was I not supported in it by the universal practice of all courts, and the concurrence of all writers upon the law of evidence, and enabled to declare that no instance can be produced of a contrary decision.

There can therefore, sir, be shown neither reason nor precedent for departing in this instance, nor in any other, from those rules and principles which constitute our system of jurisprudence—a system worthy of the admiration of the world, as being the most distinguished production of human intelligence, and worthy of our warmest affection, as being the greatest blessing we enjoy.

Having now, sir, stated these objections against the present inquiry, and more particularly and more earnestly against the principles which the honorable committee have recommended to govern it, I gladly proceed to discharge the remaining part of my duty, by submitting a few remarks upon the testimony exhibited upon this occasion. It will be readily admitted that, excepting Elias Glover, no witness deposes directly and positively to the guilt of the honorable member accused. Their testimony is wholly circumstantial, and I hope to be enabled to show, that from no circumstance they state can guilt be fairly inferred. But the chief question to be ascertained, the point on which this inquiry will be found wholly to turn, is the degree of credit which is to be given to the testimony of Elias Glover. I am much gratified, sir, in recollecting the importance attached to the evidence of this witness in the commencement of this proceeding, and the almost universal acknowledgment that Mr. Smith's fate depended upon the truth or falsehood of his testimony. We are most willing to rest it upon this issue; we could not ask a more favorable one than that which compels every man before he can believe in the guilt of the accused, to the necessity of first believing in the truth of Elias Glover, and this I now proceed to show is impossible.

The first question asked on these occasions, is, "What is the general character of the witness?" We have traced this person, sir, from his first setting out in life, have followed him into every place where he has lived, and put this question to his neighbors. How is it answered? At Newtown, Connecticut, where he first established himself, thirteen deponents declare him unworthy of credit; with some slight difference of expression, this is clearly and positively affirmed by them all. One of them, however, (Mr. Oliver Tousy, I believe,) states that he made particular inquiries of almost all the respectable persons in and about Newtown, and that he inquired of none but respectable persons; that, from the result of these inquiries, he is induced to believe that was a respectable jury taken from Newtown and Elias Glover sworn as a witness before them, he would not be believed. It seems, sir, that he soon changed so disagreeable a situation. We next hear of him at Delhi, in Delaware county, New York. From this place, sir, we have produced to you the depositions of twenty-one witnesses, who all concur in a similar opinion of his infamy, using, if possible, still stronger language than the witnesses from Newtown. By what means can a character thus charged be defended? Can it be said that these men are selected, and are his enemies? They swear they are not. That they are not themselves credible? Many of them were, fortunately, known to the honorable members of the other House, who have told you they are respectable. Among them are the chief judge and the associates, and the sheriff of the county in which he practised, of whom one is now a Senator of New York, and two of the others members of Assembly; nor can such testimony be outweighed by that which his father and his uncle have collected in support of his character. There are few

men so infamous but that some persons may be always found to declare a good opinion of them, and what sort of persons these are who have said they never heard anything against the reputation of Elias Glover, it may not be difficult to ascertain. Upon this subject, it is only necessary to recal the attention of the Senate to the manner in which those depositions in New York are proved to have been taken by his uncle, David Beers, who is himself one of the deponents. Ezekiel K. Granger states that this man used every expedient to prevent the attendance of Mr. Smith's attorney; that he refused to examine any witness in his presence, and that nearly half of whom he did procure to depose, are the relations of Glover; a circumstance on which the deponents are entirely silent. In addition to this, he is proved by one of those persons to have altered and misstated his testimony. Surely his character is very far from receiving any support from depositions thus taken. We have also produced a record from Delaware county court, which, though it may not prove him guilty of forgery, yet contains evidence charging him with an act almost equally dishonorable. From this accumulating weight of disgrace, thus increasing with his progress in depravity, he again finds it necessary to escape, and wisely determines to fix upon a still more distant residence. The last two or three years of his life have been spent in the State of Ohio, and, during that period, I shall be able to show that he has reached a height of profligacy even beyond the promise of his former years. The numerous witnesses from Cincinnati, though not particularly questioned as to his general character, (being examined to impeach his credit on other grounds,) yet show the degree of estimation in which he is there held; and thus, sir, we flatter ourselves with having produced the most ample proof that truth is not to be expected from this witness; that he would not shrink from perjury, when prompted to accomplish a favorite object. That such an object was presented to him on this occasion; that the inducements to his crime were considerable, is obvious. We are informed by many of the deponents from Cincinnati, particularly by Mr. Burnet and Mr. St. Clair, that he had long felt and evinced the most malignant animosity towards Mr. Smith. The existence of this disposition in himself, and others associated with him in the same dishonorable cause, is further evidenced by the base and unmanly means they have used during this inquiry. I allude, sir, to their refusal to give evidence for Mr. Smith, and then secretly sending their depositions to the Senate; conduct in every respect worthy of the friends of Elias Glover; and also to those anonymous slanders which have been forwarded (doubtless from the same source) to almost every honorable member of this House. Of these deponents, and the support their testimony attempts to give to the character of Glover, little need be said. I cannot suppose it possible the Senate will receive this evidence, or, if received, that any reliance will be placed upon it. The profligacy, however, of the principal one among them is so palpable and audacious that it deserves some little notice; I mean William McFarland, the friend to whom Elias Glover alludes as having been present when Mr. Smith acknowledged his participation in the conspiracy. This man, sir, has had the effrontery (after refusing to answer Mr. Smith's interrogatories) to send on to the Senate an affidavit in which he states that Elias Glover's deposition is substantially correct; yet he had been sworn at Richmond, and we have his affidavit, and again at Chilicothe before the grand jury, and we have a statement of his evidence. They afford the most direct contradiction of his present deposition that can be conceived. Unless Mr. McFarland then will condescend to tell us, how are we to ascertain which is true and which is false? As it now stands we have, in addition to his declarations to General Gano, and Mr. Burnet, one or two of his depositions acquitting Mr. Smith, to set off against the one which accuses him. Of the other deponents I shall say no more than what appears from their own representation, (and nothing more harsh could well be said of them,) they are the friends of William McFarland and Elias Glover. To have obtained the enmity of men disgraced by such a friendship is no small honor to Mr. Smith.

However conclusive this proof of the general character of this witness may appear, it yet constitutes but a small part of the infamy with which we have overwhelmed him. We have shown his capacity for perjury, and the disposition he must have felt to exert it on this occasion. I now proceed to point out the actual commission of it, in the most wilful, premeditated, and repeated instances. This witness, it seems, appeared before a grand jury at Chilicothe, in January last, which body had the penetration to discern his falsehoods, though no testimony was produced to discredit him. One of the jurors, Mr. Ethan Stone, has stated to us in his deposition the substance of his examination on that occasion, from his notes, which he tells us he was very particular in taking. His statement is also corroborated by General Gano and Colonel Armstrong, who were members of the same jury. We are thus informed that Elias Glover on that occasion declared "that 'he had never published or offered for publi-'cation any piece in ridicule of the measures ta-'ken by Government to arrest the progress of 'Burr's conspiracy." Of the falsehood of this assertion we have produced the most undeniable evidence.

The editor of the Western Spy, David L. Carney, deposes that Glover brought him such a piece, which he refused to publish. Ephraim Morgan swears that he was present at the time, and confirms this statement. If Mr. Glover is disposed to dispute the point with these two witnesses, we will call a third, to whom, however objectionable, he must submit. This is no other than himself. He told Mr. Arthur St. Clair (as that gentleman states in his deposition) that "he 'had published one piece, ridiculing the measures 'taken to stop Burr, and had written another '(which he offered to show him) which the print-

ers had refused to publish." He again told the same to Mr. Jacob Burnet, and urged him to join in squibbing the measures of Government. Can anything be more complete and confounding than this detection? Let us view another instance. The same grand juryman informs us that during his examination he declared, "that he never had any correspondence with Colonel Burr;" these are the words taken from Mr. Stone's notes. And yet he tells Captain Nichols, whose deposition we have produced, that he had written to Burr, and that he daily expected to hear from him. In addition to this, the testimony of Mr. George Russell is before the Senate, who is personally known to several of the honorable members of this House, who declares that Glover actually gave him a letter to carry to Colonel Burr, with injunctions to burn it if he did not see him.

I might, sir, point out other instances of falsehoods equally gross, but it cannot be necessary to take a particular notice of each. I shall therefore only call the attention of the Senate to a circumstance which exhibits a number of them in one general point of view. He appears from his own testimony to have been the person who furnished Matthew Nimmo with his information relative to Mr. Smith's participation in the conspiracy. Now the information he gave Nimmo should certainly agree with that which he now gives us in his deposition. Yet they are essentially different, nay, even directly contradictory, as is obvious from comparing them.

But, sir, independent of all these circumstances, I would ask nothing more to discredit the witness than the internal evidence of falsehood which his deposition bears. What can be more incredible than the facts he states? Mr. Smith is an associate in Burr's conspiracy, and yet never commits an act which evinces the least participation in it, never affords it the least support, never endeavors to interest his friends and dependants in it, but would have remained wholly unknown and unsuspected but for his disclosure to Elias Glover; and this confidant, whom he thus highly trusts, was at that very moment, and before and afterwards, his open and irreconcilable enemy.

He further tells us that he received this communication "under the strictest injunctions of secrecy; that to divulge it on any occasion less pregnant with evil would reflect infamy and disgrace upon his character and conduct, and that he therefore balanced between his honor and his patriotism, before he could divulge it." Now, can Mr. Glover reasonably expect any one to believe this? And if we were thus to indulge him, how much reputation would he save by it? Does a man of character ever allow any circumstances, however "pregnant with evil," to induce him to receive a communication, promise to conceal it, and then divulge it? Where, sir, does he find a sanction for a doctrine so absurd and detestable? Does that sacred volume which he has dared to profane with his touch, and thus openly contemns, allow any such dispensation from the eternal and immutable laws which it awfully commands us on all occasions to observe? Is any such ridiculous exception to be there found, which shall justify a man in violating the plainest rule of morality and becoming a scoundrel for the good of his country? But even if this pretext could account for his disclosure to Nimmo, in November, it can be no pretence for his afterwards voluntarily and certainly unnecessarily reducing it to an affidavit in February. Some delay in making out this deposition might be necessary, from the nice balance which he tells us he was adjusting. With his honor in one scale and his patriotism in the other, it is not wonderful that it should take him a month or two to ascertain which of these two straws was the heaviest; but it is singular that his patriotism should not preponderate till all symptoms of danger to his country had disappeared—till the conspiracy was completely defeated.

There are, sir, two other depositions relative to the credit of this witness which I had intended to notice. Mr. Longworth details to us a conversation held between him and Glover, early in February, and just after he had made his affidavit. Glover then told him that he had not "acted against Mr. Smith;" that "he thought him unjustly accused," and believed "he had no share in the conspiracy." In the April following, Dr. Lanier's deposition informs us of an interview (at which he was present) between Mr. Smith and Glover. How strongly marked is the conduct of each on that occasion. In Mr. Smith we see the firmness of an innocent man, indignantly daring forth his slanderer, and in the other a soul as contemptible for its meanness as detestable for its vices, descending (if indeed such a creature can properly be said to descend to anything) to the grossest falsehoods and most humiliating prevarications.

I have done, sir, with this witness. I fear I have detained the Senate unreasonably upon this subject. I therefore leave him to that contempt which I trust he will meet with here, and to that punishment which public justice will hereafter inflict upon him. For should he escape from this, I have no doubt it will be owing more to his own agility than to the crippled condition of our courts. Nor shall I have much apprehensions of his acquittal, even if he is allowed to plead that "he is possibly innocent."

I now proceed to make a few hasty observations upon the circumstantial testimony offered by other witnesses in support of this accusation, and first by Peter Taylor. The circumstances principally relied on in the statement of this witness is the conversation which he details between Mr. Smith and himself, and particularly the charge which Mr. Smith, he says, gave him "not to go to a tavern, lest the people should sift him with questions." Admitting this conversation to be correctly repeated, nothing can be more unfair and unreasonable than to infer from it that Mr. Smith was concerned in the conspiracy, or even acquainted with its object. May it not be more properly attributed to his knowledge of the public agitation, which Mr. Burr's movements had excited, his belief that they were innocent, and his apprehensions that this agitation might be dan-

gerously increased by Peter Taylor's representation and exaggerations of Mrs. Blannerhasset's alarm. There are various other motives equally pure to which this direction might have been owing, and it would therefore be unjust to attribute them to a criminal one. It could not have arisen from any fears in Mr. Smith that this man would disclose any of the plans of the conspirators. He had himself already "sifted him with questions" and could learn nothing, and therefore could not have supposed that others would be more successful.

But, sir, this admission is fully as unreasonable as the conclusion attempted to be drawn from it. We do not impeach the character of Peter Taylor; we do not say that he has wilfully misrepresented this conversation, but we deny him that degree of intelligence, recollection, and accuracy, so essential to a witness who is to repeat a conversation with necessary correctness. Can this honorable House infer guilt from words, without very strong evidence that they are accurately related? The least variation, the suppression or addition of a syllable, may make the most material difference. May he not have misunderstood Mr. Smith? May he not have forgotten parts of the conversation, and be indistinct and confused in his recollection of it? We have, sir, among these depositions a most remarkable instance, in which two gentlemen, both respectable and intelligent, undertake to detail to us the particulars of one of Mr. Smith's conversations, (I mean Col. Taylor and Dr. Sellman,) and their statements are directly contradictory. Let us now look for a moment at the deposition of this witness, and see whether it bears those marks of accuracy which should entitle him to attention. Besides that gross stupidity so observable in every sentence of it, there are several of the most palpable misstatements contained in it. First he tells us that Dudley Woodbridge was on the bank of the river when the boats left the island, after midnight, and yet that person and the man who slept with him, depose that he was not out of bed after 10 o'clock. Again he states, in his last deposition, that when he went to Mr. Smith's they had never seen each other before, and yet on his examination at Richmond he had stated that Mr. Smith knew him; and this strange contradiction is made, although the statement of his former evidence, in the Richmond Enquirer, was but the moment before read over to him, and acknowledged to be correct. There is one other remarkable instance, which shows that he cannot even remember with any tolerable distinctness his own conversations. On the statement of his evidence at Richmond he tells us that when Blannerhasset and himself were returning to the island, after he had left Mr. Smith's, he was urged by him to accompany him in this expedition, that he refused all the honors offered him, unless he should be permitted to take his wife with him. Now, sir, he could have said no such thing to Blannerhasset, for his wife had been dead for a month or two; he himself admits in his subsequent deposition that she died in September, and this conversation took place late in October or early in November following.

It is totally immaterial to what cause these palpable misstatements are to be attributed; they essentially affect his accuracy as a witness, and show how little reliance is to be placed on this part of the evidence.

There are various other circumstances which have been collected by the malignant industry of Mr. Smith's enemies, in that strict scrutiny to which all his actions have been subjected, and these have been exaggerated and distorted till they were made to bear some suspicious appearances. Of these it can be necessary to say but little. I rejoice that Mr. Smith has been enabled to present so complete and satisfactory an explanation of them. Of his entertaining Colonel Burr at his house I shall say nothing, since if that fact merited consideration, it would equally criminate most of the repectable people in Cincinnati, and particularly Colonel Taylor himself, who informed us that he waited on Colonel Burr and invited him to dinner.

But it is said he corresponded with Colonel Burr; true, sir, but in what manner? Not in cipher, as it is well known the associates in this project made their communications to each other; or in any secret manner whatever. Mr. Smith immediately and publicly speaks of it. We have offered the depositions of many of the first characters in that country, to whom Mr. Smith showed these letters just after they were written; of one particularly who was present when he received Colonel Burr's answer from the post office and to whom he instantly handed it. We have produced to you these two letters and they contain nothing criminal; nothing but what persons in their situation and with their views might be supposed to have written. Nor can there be the least pretence for supposing they were fabricated for the purpose of removing suspicions. For at the time they were shown by Mr. Smith he was suspected by nobody, nor had he any reason to suppose he ever should be.

He has been also charged with receiving and forwarding despatches from Blannerhasset to Burr. This circumstance is mentioned by Colonel Taylor, as one which operated to Mr. Smith's disadvantage. Now, sir, he has shown the nature of these despatches by the depositions of persons who were requested to convey them, and by others who saw them opened, and by many to whom Mr. Smith openly spoke of them. They contained a silk coat and a note from Blannerhasset requesting him to forward it to Mr. Burr.

Equally unreasonable were the conjectures formed from his having accepted and paid a draught of Colonel Burr's. To this circumstance we have offered every explanation of which it was susceptible. We have proved by various depositions that it is usual for persons travelling in that country to deposit their money in safe hands and afterwards draw for it, and we have clearly shown that this draught must have originated in that manner from Mr. Smith's mentioning it at the time. General Carberry informs

us that about the time of Colonel Burr's departure Mr. S. told him that he had left in his care a part of his baggage and a sum of money. All these circumstances, Mr. S., if guilty, would have endeavoured to conceal; and yet it appears that the first information of them, and that too immediately on their occurring, is uniformly derived from himself. Neither can his guilt be inferred from his son's being the bearer of a letter to Blannerhasset's island, even if it were admitted (of which however there is not the least shadow of proof) that he knew the contents of the letter he carried. Mr. Smith has proved that he was then, and had been for some time, absent from home, and that he expressed strong disapprobaton of his son's imprudence upon his return.

Another incident in this string of vague possibilities is his happening to go to Frankfort at a time when Colonel Burr was there. He has explained the motives of this journey. Mr. Kelly, Mr. Hart, and several other gentlemen depose to the business which occasioned it.

His absence from the United States at the time the indictment was found against him, is, I understand, also relied upon. If this indeed appeared to have been owing to any desire to avoid an investigation into his conduct, if he had sought to remain within the Spanish territory, and had been unwillingly brought forward to answer this charge, it would indeed have been a circumstance amounting to proof infinitely stronger than all which this inquiry has produced. But if his conduct was directly the reverse of this; if he was carried there by important and indispensable engagements; if, when there, informed of the indictment, he immediately relinquished his business, and took the most prompt and decided steps to return and face the prosecution, and did so return, (of all which he has produced the most conclusive evidence;) then, sir, this circumstance not only ceases to afford any presumption of guilt, but clearly evinces his innocence.

Having now, sir, endeavored to show the futility of the testimony adduced to support this charge, it might be sufficient here to rest our defence of the honorable member accused. But, sir, though more may be unnecessary, I rejoice that more is in our power; that we have been enabled not only to destroy the force of the proof offered to criminate him, but to exhibit the most complete and direct evidence of his innocence. I am sensible, sir, that I have trespassed greatly upon the indulgence of this honorable Senate. I shall not, therefore, take that view of this part of the case which its importance deserves; but will only beg leave to suggest a few considerations which appear to my mind unanswerable, which will render all doubt upon this subject (if indeed a doubt yet remains) utterly impossible.

In the first place, to what but his innocence can it be attributed that such numbers of the conspirators knew nothing of his association with them? We have produced the depositions of several who appear to admit that they had been induced to participate in this enterprise, and they declare their ignorance and disbelief that Mr. Smith was in any way concerned in it. Nay, sir, let us look at the declarations of their chief, Colonel Burr himself. He has various communications with persons whom he was desirous to bring over to his views, many of which are detailed to us in the report of the evidence at Richmond. In these he makes the most flattering representations of his prospects, endeavors to show the adequacy of his means, the number and consequence of his adherents. Among these he never mentions Mr. Smith, though there was no man, in the whole Western country, the importance of whose cooperation would have been more obvious. Here is one striking instance of this, which I beg leave to mention. Lieutenant Jackson deposes that when Colonel Burr gave him the draught on Mr. Smith, he directed him to call on General Tupper, to whom he referred him for information relative to the objects of the enterprise. Now, sir, if Colonel Burr had known Mr. Smith as one of his associates, why should he have been silent on this occasion; why should he not have allowed Mr. Jackson to get his information from Mr. Smith, when he presented his draught, without proceeding to General Tupper?

All the other conspirators seem equally ignorant of Mr. Smith's participation. When Bollman and Swartwout communicated with General Wilkinson, in the most unreserved manner, they seem to know nothing of it; they give him no intimation that the army contractor, the very man who was supplying his troops with provisions, had any connexion with their schemes.

Let us even descend to Glover and McFarland; that these men were engaged in this expedition, after the proofs we have produced, cannot be questioned. And what are they able to say to criminate Mr. Smith?

If they were all living in the same place, associates in the same conspiracy, is it possible they would not have had frequent interviews? Would they not have had it in their power to produce some act, or at least some avowal to others, by which his guilt could be proved, beyond the possibility of denial? Yet we hear Mr. McFarland frequently acknowledging and twice even swearing that he knew nothing of Mr. Smith's connexion with it, and all that their malignant efforts have enabled them to collect, is one solitary conversation depending wholly upon the unsupported assertion of Elias Glover.

Thus, sir, it appears that if Mr. Smith was a party in this conspiracy, the persons from whom he most studiously concealed it were those who were associated in the same project. Neither are they more fortunate who were particularly engaged in watching the progress of this enterprise and asertaining who were its partisans. General Gano states that he used various means to determine whether the reports relative to Mr. Smith were well founded, and he satisfied himself of his innocence. He also directed Major Riddle to assist this inquiry; that officer reported to him that he had frequent conversations with Mr. Smith, and had endeavored to ascertain whether he knew anything of Burr's plans, and was con-

vinced that he did not. Even Colonel Taylor, with whom these suspicions were strengthened by the conversation relative to a disunion, which he thought he had heard from Mr. Smith, was yet so far from discovering anything to confirm them in his inquiries, that he calls on Mr. Smith to aid him in procuring information, and frequently declares (as General Carberry's deposition informs us) that he did not believe Mr. Smith was an accomplice.

In the next place, sir, how can Mr. Smith's guilt be in any manner reconciled with his conduct in opposing the progress of the expedition. Major Martin, Dr. Stall, General Gano, Mr. Totten, and numerous other witnesses, prove that it was principally owing to Mr. Smith's exertions that any effectual support was rendered to the measures of Government. When the President's proclamation was received at Cincinnati, it seems there was no means of arming the militia. The orders to the keepers of the arsenal, to deliver out the public arms, had been neglected, and he persisted in refusing to deliver them without. At this juncture Mr. Smith, with that earnestness and decision which so strongly mark his character, crosses the river at midnight, offers his bond to Major Martin, in the penalty of $10,000, to indemnify him; procures the arms, and delivers them to the officers; prepares barracks and supplies for the militia; furnishes one of his own boats, and in short makes every arrangement to obstruct the passage of the expected armament.

It may perhaps, sir, be here objected, that these circumstances rather prove that Mr. Smith then abandoned the enterprise than that he never participated in it. That the vigilant measures taken by Government alarmed him, and that therefore, hopeless of its success, he sought by a zealous opposition to escape detection. However plausible this may seem, the least reflection will show how unreasonable is this suspicion.

How does it appear that the situation of the conspirators was at this time more unpromising than at any former period? They had thus far proceeded without meeting any obstacles; their plans were arranged and ripe for execution; they were hourly expected to embark. And what was there so alarming in the measures taken to oppose them as to strike a panic into Mr. Smith and subvert his resolutions? The militia were called out it is true, but they were without arms. Their officers inform us that they could not even station a guard upon the river. I should rather suppose that this circumstance would have been considered as more auspicious than anything he could have expected. Nor does it appear that this effect was produced in the minds of any of the party. For even at a subsequent period, and after the militia, by Mr. Smith's exertions, had procured arms, we find Captain Nicholls at Cincinnati still adhering to their views and far from despairing. Nay, even Elias Glover (whose courage appears from Dr. Lanier's deposition to be about equal to his veracity,) and who doubtless was as ready as any one to renounce his associates when he saw them sinking, is seen at the same period persisting in his adherence to them. He tells Captain Nicholls to hasten his departure lest the guard should stop his boats, declares that he will shortly follow, and informs him that he had sent off an express to the party at the island. There is one other circumstance that totally overthrows this suspicion. If Mr. Smith had thus not only deserted but opposed his associates, would it not have excited their resentment? And would they not have revenged themselves for his treachery by disclosing his participation and showing that he was equally guilty with themselves?

It cannot be necessary to contrast this conduct with that which we might expect to find in Mr. Smith, if, most unfortunately for his country and for himself, he had really been concerned in this enterprise. It is well known that the circumstance which first excited the suspicion of Government, were the unusual preparations made by Colonel Burr and his party on the western waters. From these suspicions they would have been perfectly secure by obtaining the co-operation of Mr. Smith. His contracts for the supply of the army, and his engagements to prepare boats for the navy, would have enabled him to collect any quantity of provisions and materials, and place them in suitable situations without exciting the least attention: and whenever they were ready to act, he might in a moment have stopped the supplies of your armies, and suddenly directed all his resources to aid in the most effectual and fatal manner the objects of the combination.

Thus, sir, in short it appears, that Mr. Smith has not merely forborne from the commission of these acts which if guilty it is almost certain we should have discovered in him, but has pursued a most decided and distinguished course of conduct, utterly unaccountable upon any other presumption than that of his innocence.

I will now, sir, conclude by adding to these considerations those which naturally result from the view, which the testimony affords us, of Mr. Smith's character and situation in life, and the various honorable and lucrative employments committed to his trust. These alone, if properly considered, will be found more than sufficient to outweigh all the circumstances adduced against him. I will not undertake to point out the objects of Colonel Burr and his partisans, but am very willing to admit the correctness of the information collected by the honorable committee on this subject, and so eloquently detailed in their report. They are there represented as having been only prevented, by the "vigilance of Government and of 'faithful citizens under its direction from a speedy 'termination not only in war, but in war of the 'most horrible description, in war at once foreign 'and domestic;" that "the debauchment of our 'army, the plunder and devastation of our own and 'foreign territories, the dissolution of our national 'Union, and the root of interminable civil war, 'were but the means of individual aggrandizement, 'the steps to projected usurpation."

Now, sir, is Mr. Smith the sort of man to whom conspirators, who were in their senses, would have proposed such a scheme as this? Would he have

been solicited to join in the dismemberment of the Union, whose interest was so materially connected with its continuance, the profits of whose employment wholly depended upon it? Would he have been asked to join in "a war of the most horrible description" who is represented as enjoying every domestic comfort in the bosom of a happy and numerous family? Would he be called upon to unite in a scheme of plunder and devastation, who had every reason to be satisfied with his present possessions, who had so much to risk and so little to gain from civil commotion? Would he have been called upon to make all these sacrifices to the madness of ambition who was already distinguished even beyond his wishes?

Surely, sir, this is the first time that robbers ever made offers of partnership to the man whom they were about to plunder—that incendiaries ever called upon him for assistance whose house was to be destroyed by their flames.

No man in the whole Western country would have been more certainly ruined by the success of this project than Mr. Smith. There is therefore no man from whom it would have been more studiously concealed. To a disposition of this sort I think it not at all improbable is to be in some degree attributed the circumstance of Colonel Burr's stopping at his house. As Mr. Smith's guest he would have it in his power to say just as much as he pleased of his plans, and no more. In such a situation he would be less liable to the importunity of inquiries.

Let us, sir, for a moment fancy ourselves present at a consultation upon this subject between Colonel Burr and his confederates at Cincinnati; and let us suppose that that gentleman had so far lost his usual discernment, had felt such confidence in his personal influence as to presume that he could seduce Mr. Smith from his interest as well as from his duty. After inquiring about Major Kibby, (whom it seems he was anxious to see, and who is represented to be in distressed circumstances,) let us suppose that he mentions Mr. Smith. What would his associates, Glover and McFarland, say to this? Would they not fear, that as Mr. Smith was their enemy, he would be tempted to inform against them? Would they not also know that if Mr. Smith assented to the proposal he would hold his rank in the expedition much above them, and would have it it his power materially to affect their interests? Would they not at least have thought it highly dangerous to trust such a secret to a man so connected with the Government they were about to oppose? These considerations would instantly have dictated a most decided reply. They would have said "you can have no hopes of Mr. Smith, his interests are too obviously opposed to our designs; he is too well satisfied with his present situation to consent to the change we contemplate; he is too, highly trusted and favored by the Administration. He is, they would add, (repeating an expression used by Glover on a former occasion,) "a damned army contractor and gunboat builder;" he makes too much by the present system of things to be trusted with a scheme for overturning it. No, sir, from him our plans must be concealed; he is easily deceived; tell him a plausible story about your settlement of lands, show him your Washita grants; tell him his sons are fine promising young men, and offer to take them under your patronage." The force of these observations it would have been impossible to evade.

And, sir, whatever Colonel Burr's designs may have been, to whom does it appear that he actually did communicate them? To what kind of men does he apply to procure partisans? Why, sir, like a celebrated character of antiquity, to whom he was long ago compared, it is always the discontented, the embarrassed, the turbulent, the idle, the ambitious, and the enterprising. Nor does it appear that even to all these he fully explained himself. He had a variety of schemes suited to every taste, to every possible occasion. But among this mixed assemblage of characters, collected by these means, there is not one to be found who had not some strong and ruling passion to which he could successfully apply himself. Thus, to the romantic enthusiasm of Dr. Bollman, he would expiate on the glorious and benevolent attempt to liberate, enlighten, and exalt a nation of slaves. To the youthful heroism of Swartwout he would paint, in all their fascination,

> "The plumed troop and the big wars,
> That make ambition virtue!"

And turning from these he would address himself to such creatures as Glover and McFarland, and to them he would talk of plunder. But, sir, what motive could he expect to find in the breast of Mr. Smith that would prompt him to listen to a project that assumed any aspect of disunion, that discovered the least mark of treason, that bore even the most distant indications of "war and devastation?" What air-built castle could he picture to him to tempt him to overturn the fair and substantial fabric of his honors, the solid foundation of his happiness?

I feel, sir, that I have detained the honorable Senate upon this subject longer than I had designed. I have considered this as a question of the highest possible importance to Mr. S; as one on the issue of which more than his life depended. It is true, it has been differently represented, and I have heard it said, with surprise, that the decision merely determines the right of the accused member to his seat and inflicts no punishment. I shall not attempt to describe (indeed no description could do justice to it) the horrors of that punishment threatened by the resolution now before us. I will only ask the honorable members of this House, who are now anticipating an honorable discharge from their duties and a joyful return to their homes, to contrast the feelings excited by these anticipations, with those which they may presume are passing in the breast of Mr. Smith. I can fancy no tortures more deadful, no execution more ignominious, than that to which he must submit, whose infamy is proclaimed to the nation, whose name is blotted from your journals; who is driven slowly and reluctantly to a home where he may hope to hide himself, but which he

yet trembles to approach; who is tormented by the reflection that every step brings him nearer to the malignant exultation of enemies, to the cold civility of friends, to the inconsolable agony of a disgraced and distracted family. Surely the honorable members of this House will not inflict a punishment like this, without the most deliberate and unprejudiced consideration, without the most confirmed conviction of its justice.

From the painful necessity of such a decision, I trust that they are sufficiently preserved by the proofs which we have exhibited; that we may confidently hope for a far different result to this inquiry; one which shall effectually wipe from the reputation of Mr. Smith, the only spot which slander has ever breathed upon it; which shall restore him to the undiminished confidence of his country and of these his honorable associates.

With this sense of its importance, and encouraged by these hopes, Mr. Smith has been enabled (by almost incredible efforts) to collect from the most distant points, and within a very limited period, that mass of testimony which has so long occupied your attention. To the same motives, sir, is to be attributed (and on that account I trust will be excused) the additional fatigue which I have occasioned.

When Mr. KEY had concluded, the Senate adjourned.

WEDNESDAY, April 6.

The PRESIDENT communicated a report of the Secretary of the Treasury, respecting roads and canals, prepared in obedience to the resolution of the Senate, of the 2d of March, 1807; which was read.

Ordered, That the report, together with the documents therein referred to, be committed to Messrs. ADAMS, REED, WHITE, FRANKLIN, and BRADLEY, to consider and report thereon.

The Senate took into consideration, as in Committee of the Whole, the amendments reported by the select committee to the bill making provision for the disposal of the public lands in the State of Tennessee; and having, in part, agreed thereto, the President reported the bill to the House amended accordingly. On the question, Shall this bill be engrossed and read a third time? it was determined in the affirmative.

The bill for the punishment of treason, and other crimes and offences against the United States, was read the third time. On the question, Shall this bill pass? it was determined in the affirmative —yeas 18, nays 10, as follows:

YEAS—Messrs. Anderson, Condit, Crawford, Franklin, Gaillard, Giles, Gregg, Howland, Kitchel, Milledge, Mitchill, Moore, Robinson, Smith of Maryland, Smith of New York, Smith of Tennessee, Thruston, and Turner.

NAYS—Messrs. Adams, Bradley, Gilman, Goodrich, Hillhouse, Maclay, Pickering, Reed, Sumter, and White.

So it was, *Resolved*, That this bill pass, and that the title thereof be "An act for the punishment of certain crimes and offences against the United States."

CASE OF JOHN SMITH.

The Senate resumed the consideration of the first report of the committee appointed to inquire into the conduct of John Smith, a Senator from the State of Ohio, as an alleged associate of Aaron Burr.

Mr. SMITH attended, together with Messrs. HARPER and KEY, counsel on his behalf.

Messrs. RUSSELL and GARDENIER, Representatives from New York, were examined as to the credibility of several of the deponents on the part of Mr. Smith.

Mr. HARPER then rose and addressed the Senate as follows: It now remains for me, Mr. President, to perform that part of the duty in this case which it has been thought proper that I should undertake, and to close the defence of Mr. Smith. Fortunately for me and for him, my colleague has left me but little to do; for little indeed can be added to the force of those arguments, both on the law and facts, by which this honorable body has been instructed and entertained. To present the subject in a few additional points of view, and to enlarge a little more on some of the arguments touched by my colleague, than fell within the limit which he had proscribed to himself, is all that I can hope to accomplish; and this I shall attempt, with as much brevity as the nature and extent of the matter to be treated will permit.

And here let me premise, Mr. President, that if nothing but the character and fortune of Mr. Smith were involved in the decision to be pronounced in this case, we should abandon at once every legal objection, and confine the defence to the testimony alone; for it is the wish of the accused to be acquitted on the broad and plain ground of innocence; on the ground that he has done nothing criminal or even improper; and not on the ground that the evidence against him is not such as the law permits to be received, or that the offences alleged against him do not in law warrant an expulsion.

But believing, as we do, that Constitutional rights of great importance in themselves, and embracing the whole community in their extent, will be most materially affected, should the principles contained in the report of the committee in this case be adopted by this honorable body; should it be determined that Mr. Smith can be proceeded against in this way, upon this evidence, and for the acts with which he now stands charged; we, as integral members of the community to which those rights belong, feel it our duty, in behalf of ourselves and our fellow-citizens, as well as of our client, to enter our most solemn protest against the whole proceeding. We object therefore to the jurisdiction of the Senate in this case, on the ground that the offence alleged against Mr. Smith is not cognizable by this body; and we also contend that the evidence adduced in support of the charge, is not such as the law permits to be received.

This brings me to the inquiry, for what offences can the Senate expel?

If this question, Mr. President, were "*res integra*," I might contend, on what I conceive to be

solid Constitutional ground, that the power of expulsion is confined to acts done in the presence of the Senate; acts which tend to prevent or interrupt its deliberations, and which therefore the necessity of self-preservation, and the very nature and object of its institution, require that it should have the power promptly and effectually to suppress. This power is necessarily incident to every deliberative assembly. It would, I apprehend, exist in this honorable body, by necessary implication, if the Constitution had not given it in express words. Indeed, the Constitutional provision is to be considered rather as a limitation, than as a grant of this power.

But I am aware, Mr. President, that the nature of the offences to which this power extends, is not a new question; and that the power of expulsion has already been carried, by a decision of the Senate,* further than to acts done in the presence and view of the body. To this decision I am not now disposed to object. I acknowledge it as an authority, so far as it goes. But it does not extend to our case, nor oppose the principle for which I mean to contend. The offence alleged against William Blount, though an offence of a dangerous and infamous nature, was not an offence for which he could have been indicted. And I am willing to admit that where a Senator commits an offence of that nature, though not in the presence and view of the House, the Senate may, from the necessity of the case, proceed immediately by way of expulsion. Otherwise they would be obliged to retain among them a member who might have rendered himself notoriously infamous.

But when the offence, as in this case, is the proper subject of indictment, I contend that this body must wait for an indictment, before it can expel. For the Constitution has provided that, "in all 'criminal prosecutions, the accused shall enjoy 'the right to a speedy and public trial, by an im-'partial jury of the State and district wherein the 'crime shall have been committed."

The Constitution also gives the power of expulsion. But these two Constitutional provisions are so to be construed as that both may be effectual. One must not be allowed, by the extent of its operation, to destroy or infringe the other. By the course for which we contend, both provisions will be preserved. The accused will be tried in the manner prescribed by the Constitution. If convicted, the record of his conviction will furnish unexceptionable testimony of his guilt; and this House may proceed to expulsion, if the offence be of such a nature in their opinion as to require it.

Nor would I contend, Mr. President, that an acquittal on an indictment should, in all cases, be considered by this honorable body as proof of innocence. If the fact proved, though not coming within the legal definition of the offence charged in the indictment, were yet of a criminal or an infamous nature, the Senate, upon having the evidence laid before them, might still proceed to expulsion; because it would then appear that the offence, though infamous or dangerous, was not indictable. As if a man should be indicted for perjury, and it should be clearly proved at the trial that he had taken a false oath, but he should escape conviction by showing that it was not taken before a person authorized to administer the oath. On this evidence the Senate ought to expel.

Or if evidence had been offered which was sufficient to satisfy every man's mind, that the offence charged in the indictment had been committed; but this evidence, on account of some legal objection to its competency, had been rejected by the court, and the offender consequently acquitted. Such an acquittal ought not to satisfy this honorable body. This evidence which the court, acting under strict and positive rules of law, could not receive, ought to be considered here; and if found worthy of belief, on full investigation, it ought to produce an expulsion. Many instances of this nature might be adduced; but they will readily occur to the minds of honorable members.

Thus I admit, that the *nolle prosequi*, entered in the case of Mr. Smith at Richmond, ought not to preclude the Senate from proceeding; because it was entered on account of a legal exception taken and sustained in the case of Colonel Burr, which did not in any degree affect what may be called the moral merits of the case.

But where it is apparent, as in this case, that the offence charged, if it has been committed, is the proper subject-matter of an indictment, and is still open to be tried in that way, I contend that an indictment ought to precede the exercise of the power of expulsion. It is clearly in the power of this House to order an indictment, whenever it shall receive such information, concerning the conduct of any of its members, as to make such a proceeding necessary. The proper course, when such information is laid before it, is to consider in the first place whether the offence charged be of an indictable nature, and whether the evidence capable of being adduced, be such as a court of law can receive. Should the affirmative appear, the matter is to be referred to the public prosecutor of the district where the offence was committed, with an order from this House to prosecute the offender. Should the negative appear, or should a prosecution take place, and the offender escape by any legal exception, not affecting the moral merits of the case; the power of expulsion may then be exercised, on the best evidence that the case will admit. Should he be acquitted by the jury, on a full view of the facts, and on the broad ground of innocence, the acquittal ought to avail him here and everywhere. Should he be convicted, the record of his conviction furnishes complete ground for his expulsion. Thus every part of the Constitution is reconciled, as far as the nature of things will permit.

But it may be said, shall the Senate be compelled to retain in its bosom, while this long process of indictment is going on, a man whom every other member may believe to be guilty of the most infamous crimes? No. I would not carry the principle so far. In all doubtful cases, however strong the grounds of suspicion might ap-

* Case of William Blount.

pear to some men's minds, the member ought to be presumed innocent, till his guilt is established, in the manner provided by the Constitution and the laws. But in some very flagrant cases, which may be supposed, where the criminal act might be perfectly notorious, or might rest upon such proof as to leave no room for doubt, I would admit that the Senate ought not to retain the offender in its bosom, but, when it ordered, a prosecution might at the same moment sequester him from his seat, till his guilt or innocence should be legally established. Such a step, as tending to prejudge the case, ought indeed to be taken with great caution; but it is easy to conceive of circumstances which might render it proper, and indeed indispensable.

Will it be objected that this proceeding by indictment is too slow for the occasion? But I ask whether the trial before the Senate can be more speedy? To those who are of opinion that a member may be expelled without a trial, or, what is the same thing, without having time allowed him to collect evidence for his defence, I have nothing to say. But I would ask those who think that reasonable time ought to be allowed to a member, for making his defence, whether, after some reflection and calculation, they can believe that such a trial here would consume less time, or require less delay, than a prosecution by indictment, in the district where the offence is supposed to have been committed? If witnesses are to be heard, consider from how great a distance they are to be brought? If you dispense with the personal attendance of witnesses, and receive their depositions, consider in what remote places these depositions must be taken, and how much time must necessarily be consumed, in taking and returning them! The act will generally be done in the district where the Senator lives. That district may be Maine, Kentucky, or Georgia. In that district the witnesses will generally be found; and from thence they or their depositions must be brought to Washington. But let the trial be before a jury in the district, and the witnesses are at hand. The whole investigation may therefore take place in less time, and in a manner incomparably more perfect and satisfactory, than before this honorable House.

I adduce what has happened in this very case, as proof that I am correct in my position. Since this proceeding commenced, the circuit court of the United States has been holden in the district of Ohio, where Mr. Smith lives, and where, if anywhere, all the acts alleged against him were done. We have heard of the proceeding, and adjournment of that court. Consequently in that court John Smith should have been tried for those acts, and the record of his acquittal or conviction might now be on your table.

But, Mr. President, however weighty I may think the objection which I have now urged, it is in my mind of far less moment than that which applies to the evidence in this case.

I do not contend that all the strict rules of the common law, relative to evidence in criminal cases, ought to be adhered to in the proceeding by expulsion. Many of them would tend more, perhaps, to the exclusion of truth, by shutting out that moral evidence which satisfies the mind, than to the protection of innocence. But there is one great rule of evidence, founded in the most solid reason and the most enlightened views of human nature, which is never departed from in our courts, and ought never to be departed from anywhere. That rule I mean which requires, that a man tried for an offence, by which his safety or his fame may be affected, shall be confronted with the witnesses against him: shall have his accusers face to face, before his judges and before the world: shall be enabled to refresh the recollection of the witness, and to probe his conscience, by a cross-examination; and thus to bring forth the truth to light, in spite of prevarication, forgetfulness, or inaccuracy of expression.

How much of the credit due to a witness depends upon his manner of giving his testimony! Of this you cannot judge, unless you have him before you. It is then only that you can observe the workings of his countenance, the tones of his voice, and the expression of his eye; that you can distinguish between the firm frankness of integrity, and the boldness of impudent and hardened guilt; between the timid accents and downcast eye of bashful rusticity, and the faltering voice and fallen looks of conscious hesitating perjury; between the natural consistency of truth, and the artificial connexion of studied falsehood.

Nor is this power of cross-examination much less important in the case of an honest witness. For a dishonest witness, its use is to probe his conscience; for an honest one, to refresh his recollection, and correct his inaccuracies.

How often have we seen the most honest witness, in delivering his testimony before a court of justice, omit, through forgetfulness or inadvertency, or perhaps through an opinion that they were unimportant, circumstances which, when drawn forth by a cross examination, appeared to be very material? How often have we seen such a witness express himself so inaccurately, as to convey a meaning intirely different, from what it has appeared on a cross-examination that he intended to express?

Without a cross-examination these effects, often so fatal, of misconception, forgetfulness, and inaccurate language, must pass uncorrected; and when the testimony is taken in writing, instead of being orally delivered to those who are to decide on it, they are exposed moreover to the misconceptions, the inaccuracy, and the carelessness or haste of the writer.

How imperfect and deceptive must that testimony be, which comes to us through such a medium! It was to remedy this imperfection, so pregnant with danger to life, liberty, and reputation, that our forefathers, breaking in this instance through the gloom of barbarism which surrounded them, adopted the profound and luminous rule for which I contend, and steadily adhered to it, through every change of time and circumstances.

I therefore, solemnly protest, Mr. President, in my character of an American citizen, as well as in that of counsel for Mr. Smith, against the ad-

mission of depositions as evidence in this case. I protest against the admission of this clandestine, this furtive testimony, which shuns the light of day, and by which an honest man may at any time be rendered the victim of skulking perjury and cowardly malice. I claim for my client the privilege of being confronted with his accusers, at this bar, if here he must be tried; of subjecting the consciences of those accusers to the scrutiny of a cross-examination, in the presence of his judges: and for myself, for him, and for every member of this community, I protest against the violation of a rule, handed down for our safety from the earliest times, regarded with increasing reverence by every successive generation, and held sacred amidst the wildest excesses of civil discord, of triumphant party vengeance, and of regal oppression.

But it may be said, as it has been very plainly intimated, in the report which is to be considered as the indictment in this case, that the rules of evidence need not be so strictly observed in trials of this kind, because the consequence of conviction is not a punishment, but merely the withdrawal of a trust.

And is there then no punishment, but that which immediately applies to the person or the purse? Is this idea, worthy of none but the most base and abject slaves, to be gravely and authoritatively promulgated to the American people? Are they to be told, and by a vote too of this House, that disgrace is not a punishment? That it is no punishment for an American citizen to be stigmatized by the sentence of one branch of his Government, to be driven for an imputed crime from the honorable station in which he had been placed, and to be held up to his family, his friends, his fellow-citizens, and posterity, as a wretch unworthy of public confidence or private regard? Is this no punishment? And will gentlemen who inculcate this idea, in application to my client, lay their hands on their hearts and tell me, whether they would not consider that a punishment, in application to themselves? Whether they would not rather submit to the loss of their fortunes, or to any degree of bodily suffering, than to have such an opprobrium stamped on their names, such a stain fixed on the honor of their children?

Every honorable member of this body I am sure will answer in the affirmative; for who would not prefer bodily pain and the loss of property, to such disgrace as must result from an expulsion from this House, for the crime of which my client is accused.

Again, Mr. President. If Mr. Smith should be expelled, on these depositions of Elias Glover and his coadjutor, McFarland, whom he has had no opportunity to cross-examine, he would still be liable to prosecution at law for this offence. On this prosecution no direct use could be made of the depositions of Elias Glover and McFarland. Those witnesses must be produced in person. But still Mr. Smith would go before his jury, with this expulsion stamp upon his forehead. Nothing could prevent this expulsion, produced by the ex parte clandestine depositions of Glover and McFarland, from operating to his prejudice, on the minds of the jury. And thus a species of evidence which the law expressly excludes from criminal prosecutions would, through the act of this honorable body, thus rendered accessory to the violation of the laws, be allowed to produce a most important though indirect effect, in a criminal case.

If therefore, Mr. President, we had no defence, or only a weak one, on the facts in the case, I should insist that this prosecution, being for an offence cognizable by indictment, and resting on evidence which the law excludes, ought to be dismissed. Standing, however, as my client does strong on the facts; holding in my hand abundant proof of his innocence, I shall by no means rest his defence on this legal ground, impregnable as I deem it; but having entered in his name, and in my own, as one of the American people, this protest against a proceeding which I regard as a violation of our Constitutional privileges, I now proceed to investigate the evidence adduced in support of the charges against Mr. Smith, and to contrast it with that whereby his innocence is completely established.

I am to premise that the charge against Mr. Smith is, that he was connected with Colonel Burr in the late conspiracy. This connexion is alleged as the sole ground of expulsion; and it is attempted to be proved in various ways.

1. By the conversation stated by Elias Glover and McFarland.
2. By the facts stated by Peter Taylor.
3. By the conversation stated by Major Riddle.
4. By the conversation stated by Colonel James Taylor.
5. By Mr. Smith's journey to Frankfort, in 1806.
6. By the bill drawn by Colonel Burr on Mr. Smith, in favor of Jacob Jackson.
7. By that drawn on him by Colonel Burr, in favor of Belknap.
8. By a supposed contradiction between Mr. Smith's statement respecting the settlement of the Washita lands, in his deposition before Matthew Nimmo, and the facts which appeared in evidence at Richmond. And
9. By a supposed similarity between the style of the conversation stated in Glover's deposition and that of Mr. Smith's own deposition before Nimmo.

By some of those proofs and circumstances, or by all of them taken together, it is contended that a criminal connexion between Smith and Burr in the late conspiracy is established; and it is therefore incumbent on me to consider them all; which I shall proceed to do in the order in which they have been stated, and with as much brevity as the extent and variety of the matter will admit.

As to the conversation stated by Elias Glover, I admit that, if it did take place, it furnishes sufficient proof of a criminal participation by Mr. Smith, in the enterprise of Col. Burr, and sufficient ground for a vote of expulsion. We are, therefore, to show that Glover's deposition, even when bolstered up by the furtive skulking affida-

vit of his confederate, McFarland, is entitled to no credit. This we undertake, and unless we do it in a satisfactory manner, I admit that we fail in our defence.

And, first, we rely upon his bad character generally. To prove it, we trace him from Newtown, in Connecticut, the place of his birth and education, to Brookfield, and from thence to Delaware county, in the State of New York. Five witnesses at the first of those places, seven at the second, and twenty-one at the last, many of them proved to be men of note and character where they live, and none of them proved or even stated to be otherwise, have deposed that Elias Glover is a man of general bad character. Several of them add, that he is not entitled to belief on his oath. Now, let me ask, against what man of good character could so many of his neighbors and acquaintances be brought to give such testimony? The fact alone that so many men, who knew him in the places where he has resided, consider him as a man of bad character, affords plenary proof that he is so. These witnesses do not depose to particular facts, but they speak of his general reputation, which they state to be a bad one. This testimony is by no means rebutted by the depositions produced on behalf of Glover. The deponents state that they never heard anything against his character. This may be true, and yet his character a very bad one. But, take these depositions in their most liberal construction, and what does the whole testimony amount to? Certainly to this, that one half of his neighbors consider him as a knave, and the other half admit that, for anything which they know, or have heard, he may be an honest man. Surely, this is too equivocal a reputation to entitle the ex parte deposition of its possessor to belief in a case of this nature.

It must further be remarked, Mr. President, that the bad opinion which these numerous witnesses express of Elias Glover's reputation, does not and cannot proceed from party feelings or political animosity; for the principal witnesses, and those who have spoken in the strongest terms, are proved to be of that political party to which Glover has taken so much pains to prove that he belongs. They, as well as Glover and McFarland, are proved to be most excellent republicans; and they have the advantage of being proved also to be men of good character.

If we pursue Elias Glover in his next and last emigration, to Cincinnati, in the State of Ohio, we shall find that the bad character, which he acquired in early life, attends him still in his riper years. Col. James Taylor, who was examined at the bar of the Senate, stated that there were two parties in Cincinnati, "one of whom spoke well of Elias Glover, and the other very unfavorably." These two parties are not the two political parties which divide our country. On the contrary, they both appear, with the exception of some very few individuals, to be composed of exceedingly good democratic republicans. What, then, were these two parties? One, I answer, was composed of that portion of the citizens of Cincinnati, who espoused the interests of Mr. Smith; and the other consisted of those who had united themselves with his persecutor, Glover. The first speak "very unfavorably" of Glover; and the last, as might be expected from his associates and coadjutors, speak well of him.

And who, let me ask, belong to the party which speaks very ill of this man? It must be answered, Gen. Gano, General Carberry, Mr. Burnett, Mr. Stone, Dr. Sellman, and a number of others, who have been proved to be men of the first respectability in that part of the country. Has any such favorable account been given of those who speak well of him? Far from it. We know but little of them, and that little is very little to their honor. Some of them, when called on by Mr. Smith to give evidence in this case, refused to be examined. Some of them are proved to have been connected with Glover, in the enterprise of Col. Burr. And McFarland, the chief of the party, was extremely active and zealous in obtaining recruits for that enterprise. When he and Glover found that the enterprise had failed, they took refuge, as is customary, in outrageous patriotism; became the zealous hunters-up and denouncers of treason; and, to use the language of Dr. Goforth in his deposition, attempted to lay the body of John Smith as a pedestal whereon to rebuild their own fallen reputations. Such men as these, no doubt, speak well of Glover. Be it so. But, while Gen. Gano, Doctor Spellman, Mr. Burnet, and almost every other respectable man in the place, speak very ill of him, I shall take the liberty of contending that "*cœlum non animum mutavit*;" that he has not changed his manners with his residence; and that he still merits and enjoys at Cincinnati that opprobrious distinction to which the achievements of his early life gave him a title.

But, Mr. President, it is not on the general bad character of this man, however clearly established, that we solely rely, for destroying his credibility. I shall next proceed to show, that he has been guilty of wilful and deliberate false swearing in no less than three instances.

Being interrogated before the grand jury at Chilicothe, whether he had ever written and offered for publication, a piece ridiculing the measures adopted by the Government for suppressing Col. Burr's enterprise? He answered on his oath that he had not. He was, perhaps, not bound to answer, but he did answer, and answered in the negative. This is stated in the deposition of Ethan Stone, who was a member of the grand jury, and has been proved at your bar to be a man of very respectable character.

And yet, two printers, Samuel L. Browne and D. L. Carney, connected with Glover in politics, expressly swear that he did bring such a piece to them for publication, and that they refused to admit it, because of its tendency to bring those measures of the Government into derision and contempt.

Again: on being further interrogated by the grand jurors, he admitted that he did write such a piece, but that it was intended to ridicule the conduct of the officers who had been appointed to carry the measures of Government into execu-

tion, and not the measures themselves. Yet, Mr. Burnett swears that Glover confessed to him that he had written the piece for the express purpose of turning the measures of Government into ridicule, and offered it to him for perusal.

Here could be no mistake. Either Glover or the other witnesses have sworn to a falsehood. When their characters are contrasted with his, there can be no hesitation where to fix it.

He also swore, before the grand jury, that he had never corresponded with Col. Burr. This question, also, he was not bound to answer; but, to prevent suspicion, he did answer it in the negative—so says Gen. Gano; and yet George Russell, a man admitted to be respectable and intelligent, swears that, in the Fall of 1806, Glover gave him a letter, to be delivered to Col. Burr, with directions to burn it if he did not see Burr. This proves that he did correspond with Colonel Burr, because the letter was too important to be delivered by Russell to any but Col. Burr himself.

And this testimony is supported by that of Captain Nichols, who states, in his deposition, that when he was descending the Ohio, in the command of one of Colonel Burr's boats, Glover came on board of the boat, and advised him how to proceed with it, so as to elude the officers of Government; and yet this is the man who accuses John Smith of participating in the views of Col. Burr! This is the jealous patriot who swears that he communicated with Colonel Burr for no other purpose, but to discover his views and pervert them!

But, the general bad character of Glover, and the deliberate falsehoods, on oath, of which he has been proved guilty, are not all that we have to oppose to his testimony against our client. That testimony has been positively contradicted by his friend and confederate, McFarland. Glover introduces his account of Mr. Smith's conversation with him, about Col. Burr's plans and views, by stating that it took place in the presence of a friend, who accompanied him to Smith's house. It is fully proved that McFarland was his friend. McFarland, therefore, must have heard the conversation, if it ever took place, and he must have remembered it too, for it is impossible to believe that a conversation so interesting, so remarkable, from such a man as Mr. Smith, and on a subject which then so greatly agitated men's minds, could pass, in the presence of any man, without taking strong hold on his attention, and sinking deep into his memory.

Let us, then, hear McFarland on the subject of this remarkable conversation, in which Mr. John Smith developed the treasonable character of Col. Burr's enterprise, and confessed his own participation.

We first find him conversing with Gen. Gano, to whom, long after this conversation between him, Smith, and Glover, is stated to have taken place, he declared that he was wholly ignorant of Burr's plans, which could not have been the case had he heard such a conversation as Glover relates. He also stated to Gen. Gano, at the same time, that Glover's statement on this subject was incorrect; and he told another witness, Mr. Longworth, that he knew nothing of Col. Burr's plans, or against Mr. Smith; which he could not have said with truth, had such a conversation, as Glover relates, taken place in his presence.

But all this, it may, perhaps, be said, is mere conversation, and a man, when not on oath, may easily be supposed to deny a fact, when it tends to implicate himself in guilt.

Let us, then, hear McFarland on oath. When examined at Richmond, on the trial of Col. Burr, though sworn to tell the whole truth, he says not one word of this most remarkable and important conversation. And lately, before the grand jury at Chilicothe, when interrogated as to this very point, he declared that he knew nothing of the matter—that he had some faint recollection of a conversation between Mr. Smith and Mr. Glover, on the subject of Colonel Burr's enterprise, but could recall to his mind none of the particulars. This fact, and also the admission of Glover and McFarland, that McFarland was the friend stated by Glover to have been present at this conversation, are proved by Ethan Stone, General Gano, and John Armstrong, three members of the grand jury, in their joint deposition of February 20, 1808.

Now, Mr. President, let me ask whether any man can believe that such a conversation took place, in the presence and hearing of Mr. McFarland; that such confessions and disclosures on this most interesting subject were made by Mr. Smith; and that McFarland had lost all recollection of them, when examined before the grand jury, in January last? I answer, that it is impossible; and that McFarland's testimony, therefore, amounts to a flat contradiction of Glover's on this point.

And let it be remembered, that when Mr. Smith, under the order of the Senate to take testimony for his defence, summoned this same McFarland to give evidence on these points, and put questions to him for the purpose of obtaining a full explanation, he positively refused to answer. I hold in my hand the summons, the proof of its service, the questions of Mr. Smith, and the magistrate's certificate of McFarland's refusal. This wretch, who now appears among the accusers of John Smith, when called upon to meet his intended victim, face to face, and undergo the scrutiny of a public examination, shrunk like a villain and a coward from the investigation. Eager to destroy Mr. Smith, but not yet prepared to meet the terrors of direct perjury, his mind maintained a short and faint struggle between the desire of gratifying his malice and some remaining sense of shame; but it was short and faint, indeed. For, within a few days, his malice triumphed, and he made an *ex parte*, clandestine deposition, not only without notice to Mr. Smith, but carefully concealed from his knowledge, in which, in the teeth of all his former declarations and oaths, he declares that Glover's statement is correct. And this deposition, conceived in malice and brought forth in perjury, is sent forward to this bar, to bolster up the accusation against our honorable client! What words can describe the mingled emotions of indignation and disgust which such hardened profli-

gacy (fortunately, but seldom exemplified) must excite in every virtuous mind!

I here dismiss McFarland, but I have not yet done with his confederate, Glover, whose testimony against my client is further contradicted by Matthew Nimmo, another of the actors in this black tragedy.

I hold in my hand an extract from Nimmo's communication to the President, bearing date the 28th November, 1806. This extract, which was furnished by Nimmo, and is proved to be in his handwriting, contains some information relative to Mr. Smith's connexion with Colonel Burr; which, as it states, "was communicated by Colonel Burr, in a confidential manner, to the person from whom Nimmo received them." The person from whom Nimmo received these communications was no other than Elias Glover. This is manifest from Glover's deposition, made not long afterwards, on the 2d February, 1807, before this same Matthew Nimmo. Now, it will be found, on a comparison, that Nimmo's statement to the President, founded on Glover's communication, contradicts Glover's deposition in two or three essential points. In the communication to Nimmo, he alleges that he received his information, in a confidential manner, from Colonel Burr himself. In his deposition, he swears that he derived it from the conversation of Smith, held in the presence of McFarland. In the statement to Nimmo, he says that Mr. Smith had lately sent down the river considerable shipments for the use of Col. Burr; but in his deposition this most important fact is omitted. In the statement to Nimmo, it is said that "Next week two of his (Smith's) sons descend the Ohio to join Burr's troops, and Mr. Smith follows shortly after." In the deposition, Mr. Smith is made to "express his regret that his engagements were such that he could not go immediately himself, which he would do, if the situation of his affairs would permit."

Strong as these contradictions are, we have still stronger behind. We have seen Glover's deposition contradicted by McFarland and Nimmo, two of his friends and confederates. We now introduce Glover himself contradicting his own deposition.

Let it be kept in mind, that the conversation stated in Glover's deposition took place in September, 1805. He swears that, in that conversation, Mr. Smith opened the criminal views of Burr, and his own participation. Now, hear what he said in February following on this subject to Mr. Longworth, one of those respectable witnesses whose testimony we have adduced.

Mr. Longworth, in a deposition made in the presence of Glover, who attended and cross-examined, after stating the substance of a conversation between Glover and himself, relative to Mr. Smith, in February, 1807, proceeds thus: "And, to the 'best of his (this deponent's) recollection, he (the 'said Glover) then declared, in express terms, that 'he believed Mr. Smith unjustly accused, and that 'he was not concerned with Burr in his expedi-'tion." Contrast this with the deposition of this same Glover, made February 2, 1807, a little while before the conversation with Longworth, for the purpose of criminating Smith, as an associate of Burr.

And James M. Lanier, another of the witnesses, tells us, in his deposition, that in April, 1807, Glover, when charged by Smith with having given information against him, at first denied the fact, and afterwards, when more closely pressed, confessed that he had given information, but declared that it was nothing of any moment, or capable of operating to the disadvantage of Smith, towards whom he expressed a friendly disposition. And yet, he had then made the deposition which is now relied on for producing the disgrace and ruin of Mr. Smith! Can it be possible that a tribunal composed of men with honorable feelings, will listen for a moment to the testimony of a wretch who thus fabricates in the dark an instrument of destruction, smooths his face to the smile of friendship while he is preparing the mortal stab, and solemnly denies his hellish machinations in order to lull his victim into a fatal security?

The falsehood of this accusation, independently of the direct proof of it which we offer, is rendered in the highest degree probable by the extreme enmity which Glover is proved to have borne towards Smith, and the active endeavors which he had used to injure him. General Gano informs us in his first deposition, that, as early as July 4th, 1806, Glover had abused Smith most virulently in a public oration. Francis Dunlavy states in his deposition, that, in August, 1806, Glover displayed "very great animosity against Mr. Smith." And Colonel Taylor, in his testimony at this bar, informed us that Glover was "extremely active" in the measures attempted for the injury of Mr. Smith by a party in Cincinnati, in the autumn of 1806. Doctor Sellman, Stephen McFarland, George Jordan, and John H. Stall, furnish us in their depositions with a detail of those measures in which Glover was extremely active. Let us hear what they were.

A meeting of the citizens of Cincinnati was called for some public purpose, and was very numerously attended. Some resolutions were passed by a very large majority. There is a small, but noisy party in Cincinnati, calling itself "The Republican Society." Some of its members attended, and offered resolutions tending to criminate or vilify John Smith. They were indignantly rejected by a large majority. These zealous republicans, finding themselves out-voted, and being determined, as is usual, not to submit to the majority, when against them, resolved to make sure of their mark by calling clandestinely another meeting, to which none but such as were selected by them for the purpose, and furnished with tickets, should be admitted. The meeting was accordingly held the next evening in the upper room of a tavern, and an attempt appears to have been made, to pass the resolutions which the full meeting had rejected, and which would, no doubt, have been then palmed upon the public as the sense of the "people of Cincinnati"—for republicans love to speak in the name of the people. But the people, in this instance, chose to

speak for themselves. They burst open the doors of the conclave, and defeated the scheme. But the most zealous of the patriots were not to be so repulsed. A few of them, and among the rest, the President, and Mr. Secretary Glover, made their escape, met in private, and actually passed their resolutions, which they forthwith published; taking care, at the same time, to suppress the resolutions which had been adopted at the full and public meeting, and of which, Glover, as secretary of the meeting, had possessed himself.

Is it difficult to believe—indeed, is it not highly probable, that a man of Glover's principles and character, who has gone such lengths as these, to injure a person against whom he had conceived a resentment, would stop at a false oath, if likely to effect his purpose? And ought not testimony given under such circumstances, to be viewed with the utmost distrust?

Furthermore, can anything be more improbable than that Smith should make such a communication to Glover—to Glover his enemy, his public traducer—who, in July, had abused him in a public speech; and in August, had displayed very great animosity against him? What motive for such a choice of a confidant, in an affair on which his character, his fortune, and even his life, might depend? How does it happen, that a man of John Smith's understanding and prudence, passed over the long list of his respectable and tried friends at Cincinnati, and fixed upon Elias Glover, to whom alone, to confide the most important secret of his life? A man with whom he had long been on very ill terms; of whom, as Mr. Isaac Burnett informs us in his deposition, he had long been in the habit of thinking and speaking very ill, and whom, according to the same gentleman, he was much surprised at seeing in his house! All this, it must be allowed, is passing strange; and it will certainly require more than the oath of Elias Glover to make us believe it.

Again. Why make this grave discourse to Glover, concerning Burr's plans? Was it to enlist volunteers? No! for Smith never appears to have mentioned the subject to any other person, and if he was in Burr's secrets, he knew that Glover and McFarland were already enlisted. That they were engaged, is proved beyond the least doubt. The evidence on this point is full and unquestionable. They were not only engaged, but very actively and zealously engaged. This, Smith, if he was also engaged, must have known. Why, then, make a grave and mysterious disclosure, to two of his confederates, of the plans in which they were mutually embarked? Can anything be more ridiculous than the idea of a conspirator making a formal disclosure of the conspiracy to two of his associates? This single consideration, would be sufficient to prove that the story of this disclosure was invented by Glover, as a screen for his own guilt.

But how does it happen, that Smith, in looking round for a confidant, did not think of his friend Kelly, his confidential agent, and the usual depository of all his plans and thoughts? Kelly, to whose character men of the first rank in Kentucky, and amongst them Henry Clay, lately a Member of this House, have borne the most honarable testimony, tells us in his deposition, that the highest degree of intimacy and friendship subsisted between him and Smith, who wished to advance his fortune, and was very desirous of assisting him. Yet, Smith communicated to him nothing of Burr's plans. Desirous as Smith felt of promoting Kelly's fortune, and well acquainted as he was with the benefits of a contractorship, he would hardly have failed to hold out to his friend the brilliant post of contractor-general, or paymaster to Burr's army; which, especially when the treasures of Mexico should once be occupied, would have been so well adapted to Kelly's talents, and so fully adequate to all his desires. Smith, however, does nothing of all this; and he not only avoids all mention of these momentous and magnificent schemes to Kelly, but observes an equal silence to his friends, Gano, Longworth, Findley, and Sellman, while he singles out his persecutor and calumniator, Glover, as the chosen depository of this great secret, and very gravely communicates it to him and McFarland, with a full knowledge that they were, already, at least as well apprized of it as himself.

Mr. President, this tale refutes itself. It is impossible for any man of common sense to believe it. But, independently of external refutation, the communication stated by Glover to have been made by Smith, carries internal evidence of its falsehood, by the contradictions and absurdities wherewith it abounds. Can any one believe that a man of John Smith's intelligence and knowledge, told the ridiculous story about the frigate which Mr. Somebody was building, or had completed, in the Southern States, to be employed in this expedition? What! An individual in this country build a frigate, to which so few fortunes are adequate? Mr. Alston, who is probably the person meant, though rich, is well known not to have the means of building a frigate, even were he disposed to expend his whole fortune in such an enterprise. And this frigate, moreover, was to be built in secret. Nobody was to see it; for otherwise, the building of it by an individual, so strange a thing, would have been a matter of notoriety, with which the newspapers would have rung, and which it would have been wholly unnecessary for Smith to communicate to Glover and McFarland, and ridiculous in the last degree to communicate confidentially. A frigate built by an individual, and built in secret! Can any one believe that John Smith, a Senator, and a man of information, could tell so absurd a tale? Sir, a frigate cannot be built in a dry-dock, although it may be kept there. It must be built openly. It must be seen. Its commencement, and its progress, would be as well known on the Ohio, long before it could be completed, as on the Potomac. And to represent John Smith, a Senator, and a man of sense, gravely telling such a tale to Glover, a lawyer, and McFarland, a judge, both men of some information, accustomed to read the newspapers, and therefore knowing the falsehood of the tale, is an absurdity so gross, that

one is wholly at a loss to conceive how Glover, who, depraved as he is, by no means appears destitute of understanding, came to admit it into his fabrication. We can account for it only by a reference to the kindness of an overruling Providence, which, for the protection of innocence, sometimes impels guilt to mar its own schemes, by a strange intermixture of folly with its wickedness.

This deposition presents another instance of the same kind though not equally glaring. Glover swears that this communication was made to him, by Smith, under the strictest injunctions of secrecy. And yet, he had stated, in the beginning of the deposition, that the communication was made in the presence of a friend, who proves to be William McFarland. This is another instance in proof of the old adage, that, "liars ought to have good memories." Before Glover came to the end of his deposition, he forgot what he had said in the beginning, and thus fell into another of those Providential contradictions by which the falsehood of made-up stories is often detected.

Reviewing, then, Mr. President, all these considerations—the bad general character of Glover, at all the places where he had lived; the repeated instances of wilful false-swearing which had been fixed upon him; the contradiction of this story by his friends and confederates, McFarland and Nimmo, as well as by himself; his enmity to Smith, and Smith's ill-opinion of him; Smith's silence on this subject to all his usual confidants and intimate friends; and the inherent contradictions and absurdities of the story itself, I think myself warranted in saying, that, the credibility of Glover is completely overthrown, and that his testimony must be laid out of the case.

I come next to that of Peter Taylor, and here I feel myself greatly relieved, in being able to absolve him from the guilt of wilful false swearing. His character is said to be fair, and, for ought we know, is so. We are far from a wish to impeach it. But we shall show that in some of the minute circumstances which he relates, and which are adduced as grounds of suspicion against Mr. Smith, he probably mistakes, and that the others are satisfactorily explained.

In ascertaining what degree of credit is due to an honest witness, especially in relating, after a considerable lapse of time, minute facts, which derive their complexion from circumstances apparently trivial, it is proper, in the first place, to consider his education and habits of life, and to inquire how far they have a tendency to produce that accuracy and precision of conception and language, whereon the weight of such testimony almost wholly depends. Apply this rule to Peter Taylor. Admit him to be perfectly honest in his intentions. But we find him to be an illiterate laborer, sometimes employed as a menial servant. Such a man is likely enough to have a distinct perception, and an accurate recollection, of such facts as he is accustomed to observe. But when he speaks of things out of the usual track of his business, his thoughts, and his observation; when he attempts, at such a distance of time, to relate very minute facts, in which he could not have taken any interest at the time; I ask, if we can implicitly rely on the clearness of his comprehension, or the exactness of his memory? Is it not highly probable that he may have misconceived at the time, or forgotten since, some of those circumstances, apparently minute, on which the character of the whole transaction frequently depends?

But if, in addition to this general reasoning, it should appear that the witness has, in relating other parts of this transaction, committed several mistakes, will it not be admitted that his recollection is too confused or imperfect to command our confidence or influence our decisions? This is the case with Peter Taylor. In his testimony, taken at Richmond, from which the part now used against Mr. Smith is extracted, he relates that, in October, 1806, Blannerhasset, on their return from Kentucky, pressed him to join Colonel Burr's expedition, and that he consented to go, provided he might take his wife and family; to which Blannerhasset did not consent. On his cross-examination, he states that his wife died in the September preceding. He also relates, in his direct testimony, that when the party left Blannerhasset's island he saw Dudley Woodbridge on the bank. And it is proved by Woodbridge himself, and by Morris B. Belknap, that Woodbridge was at that time in bed, and was not on the bank at any time during that night. These are small mistakes, but they prove that Taylor's recollection of minute circumstances, such as those which he details concerning Mr. Smith, cannot be relied on.

The first of these circumstances is, that Mr. Smith, on being informed that he was a servant of Blannerhasset, asked him to go up stairs. This at first view, might have a suspicious appearance, as if Mr. Smith wished to make or receive some communications which required privacy. But when we learn that Mr. Smith had his office up stairs, where he usually wrote, and that he wished to write a letter by Taylor, the mystery vanishes, and the circumstance stands fully explained.

But he wrote a letter to Colonel Burr. No doubt, Mr. President, a letter from Mr. Smith to Colonel Burr, at that time, has in itself a suspicious appearance. But we are made acquainted with the contents of the letter, and the suspicion disappears. Instead of being a criminal correspondence concerning an enterprise in which they were mutually engaged, it is a letter informing Colonel Burr of the suspicions afloat concerning his plans and movements, and requesting an explanation, for Smith's own satisfaction. Nothing could be more natural than such a step, on the part of Mr. Smith. Colonel Burr had long been his acquaintance and friend, and recently his guest. He could not, therefore, be indifferent either on Colonel Burr's account or his own, to the reports in circulation. These reports were founded on mysterious circumstances, which Mr. Smith supposed could be satisfactorily explained, and he wrote to obtain this explanation. No conduct could be more rational or more commend-

ble. It was kind and candid towards his friend, and cautious towards himself.

The answer which he obtained was well calculated to quiet his alarms. His original letter is not in our power, but we have produced a copy of it. The answer, however, in the handwriting of Colonel Burr, is now in my hand. This letter is no after-thought; no subsequent contrivance for exhibition; for Mr. Broadwell has proved that he saw it delivered to Mr. Smith from the post office. Let it be attentively read; let the situation of Col. Burr and of Mr. Smith at that time be considered; and then let gentlemen candidly declare, whether they think that Mr. Smith, after receiving that letter, could regard Colonel Burr in any other light than that of an honorable man, indignantly repelling unfounded and injurious suspicions? [Here Mr. HARPER produced the original letter, the handwriting and authenticity of which were recognised by several of the Senators.]

But Mr. Smith inquired anxiously about the news, in the part of the country from which Peter Taylor had come. And what more natural, what more usual, than to inquire the news, especially in a time of alarm and apprehension? The operations of Colonel Burr were the subject of general conversation, and had excited no small alarm. The plot, whatever it was, appeared to thicken about Blannerhasset's island. Of course every one felt anxious to know what was going on at that place, and in its neighborhood. This circumstance, then, is of no moment; and the letter, the only ground of suspicion, being fully explained, everything is explained, except the last fact stated by Taylor, on which I will now bestow some attention.

Taylor states that Mr. Smith offered him something to drink, and "charged him not to go to any tavern, lest the people should be sifting him with their questions." Sift him about what? Did Smith then suppose that Blannerhasset's gardener and servant was possessed of the secrets of the conspiracy, which might be sifted out of him? Is it credible that so gross and absurd an idea could be entertained, by a man of his understanding? Had he used precautions to prevent Blannerhasset himself from being sifted, there would have been some sense in it: but to suppose him afraid of the gardener's being sifted, about things which if he knew them himself he must have been satisfied that the gardener could not know, is to impute to him more folly than those who charge him with a principal participation in Colonel Burr's designs would be willing to admit.

Will it be said that Smith was afraid of the gardener's being sifted, about the public occurrences in the island and its neighborhood, which a person in his situation might be supposed to know? I answer, why should he be so afraid? As those circumstances were notorious, the gardener could do no harm by telling them; and they would speedily be known at Cincinnati, whether he told them or not.

It is therefore impossible to suppose that Smith's wish to keep Peter Taylor away from the taverns, if he really had such a wish, proceeded from any fear of disclosures which Taylor might make. It is much more probable that Taylor, whose recollection we have already found to be very imperfect, or to whom these little circumstances could not then have appeared to be of any importance, has fallen into a mistake in relating them, than that John Smith did so foolish a thing. He might, indeed, caution Taylor not to go to a tavern, for fear that he should get engaged in drinking, and delay his time—a thing which he knew was very likely to happen to a man in Taylor's situation; and it is possible, that in order to keep him away, he endeavored to alarm him about something that might happen to him at the tavern. This matter, floating confusedly in Taylor's brain, has at last assumed the form of this story about sifting, which has found its way into his testimony, and is now adduced to fix a charge of treason on John Smith.

And it is not a little surprising, if we are implicitly to believe Peter Taylor, that Mr. Smith, after having taken so much pains to keep him away from the taverns, for fear of his being sifted, should immediately have sent him to one to get his horse fed; thus exposing him, for the value of a gallon of oats, to the very danger from which he had just appeared so anxious to guard him. "He then showed me, says Taylor, a tavern, and 'told me to go to get my horse fed by the hostler, 'but not to go into the house." Does not this prove that if Smith wished to keep Taylor out of the taverns, it was to preserve him from the temptation to get drunk and lose his time, and not to keep him out of the way of questions? Had the latter been his object, would he have sent this man to a tavern at all? Would he not have had the horse fed in his own stable, or sent him to the tavern by his own servant?

I here dismiss the story of Peter Taylor, Mr. President, presuming to believe that the only fact of any moment, the letter, is satisfactorily cleared up by the letter itself and Colonel Burr's answer; and that the other slight and trivial circumstances of suspicion are fully explained, or resolved into the confusedness and inaccuracy of Taylor's recollection. Certainly facts so doubtful in themselves, so inconsiderable, so capable of being misunderstood by the witness, ought not to have any weight in such a case as this.

The testimony of Major John Riddle comes next to be considered; in which he states that Mr. Smith told him that he knew more of Colonel Burr's plans than any other person in the State of Ohio, except one. Smith no doubt did, at that time, suppose that he knew a great deal about Burr's plans, for he had then received the letter in which Burr affects to explain them. It is not therefore surprising that he should make this remark to Major Riddle; but as Major Riddle was, at the time of this communication, the commander of a body of militia, stationed on the Ohio to oppose Burr's progress, it would have been most surprising if Smith, having a knowledge of Burr's real plan, had selected this officer as a person to whom to boast of it. This consideration discloses the true nature of Smith's communication to Major Riddle. He believed

that he knew Burr's plans, and that they were innocent. He therefore told Major Riddle so; but had he really known them to be criminal, this officer was one of the last persons in the world to whom he would have disclosed his knowledge. Thus this casual communication to Major Riddle, which the malicious industry of Mr. Smith's enemies has hunted up and adduced as a proof of his guilt, appears to be a most convincing proof of his innocence.

But Mr. Smith also told Riddle "that if Burr 'succeeded, he would prefer living at Cincinnati, 'to Philadelphia or New York, on account of busi-'ness." Succeeded in what? Why in the innocent plans, which Smith had just before told Riddle that he understood better than any person in Ohio, but one. These plans, as explained by Colonel Burr to Mr. Smith, were to form a strong and numerous settlement on the Washita, and in case of a Spanish war to invade Mexico, under the authority of the Government. And Mr. Smith, without more aid from the imagination than men usually obtain in such cases, might have brought himself to believe that in case these plans should succeed, they would give rise to a vast trade between the country on the Ohio, and the new settlement or conquests; that Cincinnati would become the centre of this trade, and that he, by reason of his connexions and situation, would be able to obtain a large share in it. This might have been an airy speculation, but it was certainly an innocent case; for it is manifest that the plans on the success of which it was bottomed were innocent plans. Such Smith, at that time, supposed Burr's plans to be; or he would not have made his knowledge of them a subject of conversation with Major Riddle.

That Major Riddle himself viewed the matter in this light, is evident from his conduct. He was stationed on the river, with the command of a detachment of militia, and had orders from his superior officer, General Gano, to collect as much information as possible respecting Col. Burr's plans and associates, and to report this to his General. Of this we are informed by a deposition of General Gano himself; who also states that Major Riddle did report to him, but made no mention of this conversation with Mr. Smith, nor alluded to Mr. S. in any manner. This conversation, therefore, must have been on the whole of such a nature, or accompanied by such circumstances, as to make it appear perfectly innocent to Major Riddle; who, otherwise, must have communicated it as matter of suspicion at least to his commander. Had we enjoyed the opportunity of cross-examining Major Riddle, these circumstances, and the rest of the conversation, would no doubt have been recalled to his recollection, and fully explained by him. In an ex parte deposition they have been forgotten, or omitted as unimportant—an additional and very striking example of the importance of the privilege of being confronted with the witnesses against us, and of the danger of admitting any species of ex parte testimony.

I come now, Mr. President, to the testimony of Colonel James Taylor, who represents Mr. Smith as having, in a conversation with him and others at Cincinnati, expressed opinions favorable to a separation of the Union.

It is to be recollected that Dr. Sellman, the brother-in-law of Colonel Taylor, and a warm friend of the present Administration, was also present at this conversation. This clearly appears from Dr. Sellman's deposition of February fifteenth, 1808, compared with the testimony of Colonel Taylor. Dr. Sellman has stated this conversation with great accuracy; and he represents Mr. Smith as having not even expressed an opinion, much less a wish that the Union would be dissolved, but merely as having repeated the opinions of a writer, under the signature of the Querist, who had advocated a separation. Dr. Sellman tells us that there were five or six persons present, none of whom however he names, except Mr. Smith and Colonel Taylor. Let us take his own words:

"After attending some time to the conversation, I noticed that a reference was occasionally made to a publication, or publications, in the Marietta paper. For some time I was at a loss to determine whether those gentlemen were expressing their own opinions, or those contained in that publication; for I was not present at the commencement of the conversation, though it did appear to me to be a detail of the opinions set forth in that publication. As it is now impressed on my mind, I believe, to more fully satisfy myself, I asked a question. Nor can I perfectly remember whether I intended the question particularly for Mr. Smith, or for both the gentlemen; but I believe it was intended for Mr. S. 'Do you expect or apprehend an early separation of the Union?' To which Mr. S. replied, 'Not in my life time; and I hope, or pray to God, I may never live to see it, whether it takes place sooner or later.' This declaration being perfectly satisfactory to me, I paid little or no attention to the conversation, and afterwards, I believe soon afterwards, left the place. I did not hear Mr. S., or any person present, advocate a separation of the Union, nor have I ever before or since that time, heard Mr. S. advocate a separation of the Union."

Thus, then, we see, sir, that these two witnesses—men of equally fair and respectable character, and equal intelligence—differ entirely in their manner of understanding this conversation in which they both took a part. Colonel Taylor understands Mr. Smith to have advocated a separation, and Dr. Sellman declares that he did not advocate it, but merely repeated the arguments of the Querist, and expressed his hope that a separation might never take place, and that, if it did, he might not live to see it. Now let me ask whether this contradiction, between two witnesses equally entitled to credit, does not leave the matter at least in doubt? Do not the scales hang in equilibrium? And in this state of doubt, can you decide in the affirmative? Does not the matter remain precisely as if there were no proof on either side; and can you decide affirmatively in the absence of proof? Is it not a fair and rational, as well as legal, presumption, that a man is innocent till his guilt appears; and can you say that Mr. Smith's guilt appears, when the only

witness against him is contradicted by a witness of equal credit?

But I go further, Mr. President. I contend that every presumption derived from the nature of the case, and the circumstances and situation of the parties, is in favor of the statement made by Dr. Sellman. In the first place, it appears that Dr. S.'s attention was particularly drawn to the subject, and that he asked a question for the express purpose of ascertaining whether those gentlemen spoke their own sentiments, or merely repeated those of the writer. It is not therefore at all probable that he would forget, or so widely mistake, a fact, to which his attention was so strongly attracted. Had Mr. Smith advocated a separation, as is now supposed by Colonel Taylor, Dr. Sellman could not possibly have been in doubt on the subject, and his question would have been useless and silly.

Secondly, we find Dr. Sellman very accurate and positive in his recollection of Mr. Smith's answer. It is impossible to suppose him mistaken in a point which interested him so much, and must have made so strong an impression on his mind. This answer of Mr. Smith is utterly inconsistent with the statement of Colonel Taylor; for it is incredible, that after having advocated a separation to Colonel Taylor and General Findley, he should immediately, and in their presence, deprecate it to Dr. Sellman as a misfortune, which he hoped, if it must befall us, he should not live to see.

Thirdly, as Dr. Sellman was warmly opposed to a separation, it is most certain that his attention must have been very strongly arrested, and indeed his indignation excited, by such a conversation as Colonel Taylor attributes to Mr. Smith; which could not have escaped his attention, or so soon have been effaced from his memory.

It appears, in the fourth place, that there were several other persons present at this conversation. Dr. Sellman says five or six, though he does not name any of them. Colonel Taylor says that General Findley was present. Now let me ask, if such sentiments had been expressed, in such a company, by a man holding Mr. Smith's situation in the Government, would they not have attracted great attention, and given rise to much conversation? Would not the matter, in all probability, have come to the ears of some of those persons in Cincinnati who have been so active and persevering in collecting testimony against Mr. Smith? And would not some of those who heard this conversation, beside Colonel Taylor, have been called on to testify?

Again. Why should Mr. Smith, on this occasion alone, have made himself the advocate of dismemberment? Had he been disposed to preach his doctrine, in the hope of making converts, would he have confined his exertions to this one time and place? There is no evidence, or even accusation of his having broached the subject any where else; and if he had done so, it could hardly have escaped notice. Had he been a promoter of separation, would he have addressed himself solely to those persons whom he must have known to be most averse from it; or would he not have chosen for his hearers the weak and ignorant, who were most likely to be affected by the usual arguments in favor of such a measure?

All these difficulties are reconciled by supposing, with Dr. Sellman, that Mr. Smith merely repeated, without approbation, the opinions of the Querist; and that Colonel Taylor misunderstood him as stating his own opinions and wishes. He might even have gone further, and have expressed an opinion or apprehension of his own, that the Union would one day separate. That such a speculative opinion, or rather fear, is entertained by many among us, who most ardently deprecate the event, is notorious; and we find, from General Carberry's testimony, that Colonel Taylor himself is of this number. He told Gen. Carberry that he thought the Union would separate in twenty years, and Gen. C. reproved him for fixing even an imaginary period to its duration. It does not follow from this that Colonel Taylor wished for a separation; and, surely, what he innocently thought and expressed, as a matter of speculative opinion, or of fear and dread, Mr. Smith may have innocently thought and expressed in the same manner. That Colonel Taylor should mistake the nature and extent of these expressions; should understand them as arguments in favor of separation, is far more probable, than that Mr. Smith should have advanced such arguments, at such a time, and in such company. When to this strong probability we add the positive testimony of Dr. Sellman, I cannot but confidently hope that it will remove every doubt on the subject. Had Mr. Smith advocated a separation of the Union at such a time, it would no doubt have justified strong suspicions of his being connected with the plans of Colonel Burr, which probably had dismemberment, in part at least, for their object. But I humbly trust, Mr. President, that the charge, without impeaching the integrity of so respectable a witness as Colonel Taylor, has been completely disproved.

The next circumstance alleged against Mr. Smith, as evidence of a connexion with Colonel Burr, is the visit which he paid to Frankfort, in Kentucky, in the autumn of 1806. This has been supposed to be a visit to Colonel Burr; but the testimony which we have adduced shows most satisfactorily, that it was a journey on public business. To this point, our evidence is full and complete. Mr. Smith, then contractor for the army, was called on for very large supplies, on account of the additional force called to the Sabine. He found, on inquiry from his agents in Kentucky, whose depositions we have produced, and who are proved to be men of character, that purchases could be made there on very advantageous terms, for cash. He was not in cash, and therefore resolved to try whether he could sell or discount bills on Philadelphia. The best prospect of making this operation to advantage, and indeed the only prospect of making it at all, was with the Insurance Company at Lexington, which acts as a bank and exchange office. He accordingly went to Lexington for that purpose. On his ar-

rival there, he heard, for the first time, as is fully proved, that Colonel Burr was on his trial at Frankfort, where most of the directors of this Insurance Company were attending the trial. He then resolved to go to Frankfort, for the purpose of sounding them on the subject. He arrived there in the eveuing, and stopped at a tavern, where he soon learned that Colonel Burr also lodged. In the course of the evening, he paid a short complimentary visit to Colonel Burr, saw some of the directors, learned from them that his object of selling or discounting bills could not be accomplished, and early next morning set out on his return home. All these facts are satisfactorily proved. I will not recapitulate the testimony, which is fresh in the recollection of the honorable members. But, I ask, what is there criminal or suspicious in this transaction? Surely, it would be a waste of time to employ it in the refutation of such a charge.

The next point to which I am to call the attention of this honorable House, is the bill drawn by Colonel Burr on Mr. Smith, in favor of Lieutenant Jackson. The drawing of this bill is adduced as proof of connexion between Colonel Burr and Mr. Smith. It admits of most satisfactory explanation in two different ways.

In the first place, it is notorious that Colonel Burr, in order to increase the number and the confidence of his partisans, was in the habit of representing himself as being connected with, and supported by, many persons, whose names he supposed would add some credit and weight to his enterprise; and who are known to have opposed his schemes, instead of being engaged in them. Of this, the case of Commodore Truxtun is a striking instance. In this case, we find that Colonel Burr was very desirous of engaging Mr. Jackson in his enterprise. Jackson was reluctant and doubtful. Mr. Smith was a man of note and consequence, whose name might well be supposed to have much influence on the mind of a youth like Jackson; and to draw a bill on him, for an object connected with the enterprise, was an indirect, but very significant mode of telling Jackson that he was engaged. To artifices of this kind, we know that this unhappy man had constant recourse. He, no doubt, sometimes deceived himself; but he very often attempted to deceive others, in hopes of drawing them into those schemes, which have plunged him into irretrievable ruin.

Secondly, we know that Colonel Burr, when he set out from Cincinnati on his journey down the river, left a sum of money in the hands of Mr. Smith. This is proved to be usual with persons travelling in that country, and may have been done by Col. Burr, from motives of convenience, or with a view of giving himself the appearance of a connexion with Mr. Smith, by drawing on him. But it was done. The money was in Mr. Smith's hands. Colonel Burr had drawn for it, in favor of Belknap, and he could not have known that Belknap's bill had been accepted, or would be so, before Jackson's should be presented. He had drawn in favor of Belknap, for his own use. He might, therefore, well have supposed that the money was still in Mr. Smith's hands, and that he had a right to draw for it.

But, in whatever way we account for his drawing this bill, it was his own act; an act which he had no right to do, beyond the money left by him in Mr. Smith's hands. To bring this act home to Mr. Smith, and make it evidence against him, it must be shown that he had given Colonel Burr authority to draw. In other words, had agreed to supply him with funds. Drawing the bill is nothing more than a declaration by Colonel Burr; and this declaration cannot affect Mr. Smith, unless he authorized it previously, or confirmed it afterwards by paying the bill. Colonel Burr drew a bill on me for $1,500, which I had not authorized, and declined to accept. Because Colonel Burr thought fit to take this step, am I, therefore, to be considered as engaged in his schemes? Surely, his mere declaration cannot be allowed to criminate Mr. Smith. If it could, how extensively would the principle operate! How many of the best men in the country would be implicated!

There is another circumstance which strongly confirms the view which we give of this subject. When Colonel Burr directed Jackson to call on Smith with the bill, he does not tell him to apply to Smith for any information concerning his plans. On this subject, he referred him solely to General Tupper. So says Jackson, expressly. But why to Tupper, rather than Smith? Smith was a much more important man than Tupper; and if engaged in the scheme, was quite as capable of giving him information. He would have given it much sooner, too, for Tupper lived at Marietta, and Smith at Cincinnati; where Jackson, in his journey up the river, would first arrive. Why, then, I say, direct the application to Tupper, rather than to Smith? Sir, the reason is obvious. Colonel Burr, though he might have been willing to insinuate, by drawing the bill, that Mr. Smith was engaged, knew very well that he was not; and that, if he should direct Jackson to call on him for information, it would lead to detection. This fact alone proves, more strongly than a thousand witnesses, the innocence of Mr. Smith. Witnesses may misunderstand, forget, or prevaricate; but facts like this lay open the hearts of men, let us into their inmost thoughts, and speak a language which we can neither misunderstand nor disbelieve.

As to the bill drawn by Colonel Burr on Mr. Smith, in favor of Belknap, which Mr. Smith paid, and which forms the next head of accusation, I beg leave to read to the Senate the testimony of General Carberry. He states that, some time before the date of this bill, Mr. Smith informed him that Colonel Burr, finding it inconvenient to carry his money with him, when he went down the Ohio, left it at Cincinnati in the care of Mr. Smith; a circumstance which the same witness proves to be usual, with persons travelling in that country, and on which it is impossible to lay any stress, for every body must admit that had the money been left for any improper purpose, Mr. Smith

would have kept the knowledge of it to himself, instead of communicating it as he did to General Carberry. The bill drawn in favor of Belknap, and paid, might of itself, standing alone, furnish some ground of suspicion against Mr. Smith, as tending to show that he was in the habit of supplying Colonel Burr with funds; but when it comes to be connected with the deposit of money, which is proved by General Carberry, it is completely explained. For nothing was more natural than that Colonel Burr, having left his money with Mr. Smith, should direct it to be paid to a person to whom he owed it, or who was to employ it for his benefit.

I come now, Mr. President, to the seeming contradiction between the statement of Mr. Smith, and the testimony taken at Richmond on the trial of Colonel Burr, upon which I understand that some stress is laid. I say the "seeming contradiction," because I feel confident of being able to show clearly that no real contradiction exists.

Mr. Smith, in his deposition before Matthew Nimmo, states that Colonel Burr, early in September, 1806, spoke of the settlement of his Washita lands. By the testimony given at Richmond in the trial of Colonel Burr, by Lynch, from whom those lands were purchased, it appears that the contract was not made with Colonel Burr till after the time when Mr. Smith states this conversation to have taken place. Hence it is inferred that Colonel Burr could not have spoken to Mr. Smith of his Washita lands.

But is it forgotten that Colonel Burr was in the habit of speaking of these lands as his, and of his intention of settling them, long before the period assigned by Mr. Smith for this conversation? This appears from the testimony of Commodore Truxtun, delivered at Richmond on the same trial. He states, that in the Summer of 1806, before Colonel Burr set out for the Western country, he spoke of his Washita lands, and of his plan of settlement. This he did either because he had then made an informal contract for those lands, and therefore considered them as his, though the formal contract of sale was not then made; or because he had then contrived this disguise for his projects, and merely made use of it to cover his real design, from Smith and others with whom he thus conversed. In either case he would speak of the land as belonging to him. Indeed this whole argument against Mr. Smith rests on the idea that Colonel Burr cannot be supposed to have said anything that was not true. Mr. Smith states that Colonel Burr spoke of his Washita lands, at a time when those lands in fact were not his. Therefore Mr. Smith must have stated an untruth. I believe that gentlemen will not, on reflection, find this argument very solid.

One more point, Mr. President, and I shall conclude an argument, by which I fear this honorable body has been, as I certainly have, very much fatigued.

It is said that there exists a strong similarity between the deposition of Elias Glover, and the statement made by Mr. Smith himself, on oath; whence it is inferred that the deposition must be true. I must confess that I have not been able to discover this similarity; but if it really exist, it may be easily accounted for. Mr. Smith's statement was sworn before Nimmo, on the sixth of January 1807. Nimmo, it appears, kept a copy, for on the next day he certifies a paper as being a true copy of the deposition sworn to before him by Mr. Smith. This he could not have done, unless he had kept a copy, with which to compare this paper. On the second of February following, Glover made this deposition, before the same Matthew Nimmo. Now we know that Nimmo was the confidential friend and adviser of Glover; and we may very easily conceive that, before Glover prepared his deposition, he had been indulged by his friend with a persual of the copy of Mr. Smith's, and that to give the greater air of truth to this tale, he imitated the language as much as he could, and followed the statement of facts, as far as would suit his purpose.

Again. It is very probable that Nimmo wrote the deposition of Glover; and that, having Smith's deposition on the same subject fresh in his recollection, he fell insensibly into the use of the phrases. This is known frequently to happen. Or the resemblance may be merely accidental. And surely a resemblance between some phrases of these two depositions, which may have proceeded from accident, or from design in Nimmo or Glover, is very weak ground for inferring the truth of facts so utterly improbable as those stated by Glover, and so strongly contradicted by the great mass of testimony which we have produced; among which are the declarations of Glover himself, and the oath of his friend and confederate McFarland.

Having now, Mr. President, reviewed all the grounds on which the charge against Mr. Smith is rested; having, as I presume to hope, satisfactorily explained all the objections which have been urged against him; and presented all the facts fairly, and as clearly as was in my power, to the view of this honorable House; I am far from intending to trouble it with any arguments of mine on the subject. The enlightened individuals who compose it are much more capable than me of drawing the proper inferences from the testimony which has been laid before them, and on which they have bestowed a most patient and laborious attention: and to their judgment I cheerfully, and I may be permitted to say confidently, submit the cause of my client. They will doubtless bear in mind, that in this cause is involved his honor, dearer to him than property or even life; and that in pronouncing their decision they are to be guided by testimony, and not by conjecture; by the light of truth, and not by the dark and deceptive glimmerings of suspicion.

When Mr. HARPER had concluded, the consideration of the subject was further postponed.

THURSDAY, April 7.

Mr. ADAMS presented the petition of a number of merchants of the town of Boston, praying to export certain quantities of fish, for reasons mentioned in the petition; which was read, and re-

ferred to Messrs. ADAMS, ANDERSON, and GILES, to consider and report thereon.

Mr. BRADLEY reported, from the joint committee appointed to inquire what business is necessary to be done by Congress, in the present session, and when it may be expedient to close the same; and the report was read for consideration.

The Senate resumed, as in Committee of the Whole, the consideration of the amendments reported by the select committee to the bill, entitled "An act concerning courts martial and courts of inquiry;" and on motion, by Mr. GOODRICH, to strike out of section 1, line 5, the following words: "or court of inquiry;" it was determined in the negative—yeas 12, nays 17, as follows:

YEAS—Messrs. Adams, Anderson, Crawford, Gilman, Goodrich, Hillhouse, Maclay, Pickering, Reed, Sumter, Turner, and White.

NAYS—Messrs. Bradley, Condit, Franklin, Gaillard, Giles, Gregg, Howland, Kitchel, Mathewson, Moore, Pope, Robinson, Smith of Maryland, Smith of New York, Smith of Tennessee, Thruston, and Tiffin.

Ordered, That the further consideration of this bill be postponed until to-morrow.

CASE OF JOHN SMITH.

The Senate resumed the consideration of the first report of the committee appointed to inquire into the conduct of John Smith, a Senator from the State of Ohio, as an alleged associate of Aaron Burr; and Mr. Smith attended.

Mr. ANDERSON moved to postpone the consideration of the report in this case until to-morrow, to give the members an opportunity to collate the new testimony offered. This motion was lost.

Mr. S. SMITH offered a resolution requesting the President to lay before the Senate the letter of Judge Nimmo to him, the letter of Mr. Smith, covering the depositions of himself and his son, and such other papers as may be in the possession of the Executive touching any alleged connexion between Mr. Smith and Burr's conspiracy.

This motion was agreed to, subject to the understanding that it should not interrupt the progress of any discussion which might arise on the report.

Mr. ANDERSON having expressed his surprise at the attempt to precipitate a decision, and declared his inability to take that full view of the subject (which he desired to do,) before to-morrow, on motion of Mr. WHITE, its further consideration was postponed until to-morrow.

In the course of the remarks, which fell from Mr. GILES, he observed that he considered Elias Glover as so completely discredited, that he desired no further information to make up his opinion.

FRIDAY, April 8.

A message from the House of Representatives informed the Senate that the House concur in the bill sent from the Senate, entitled "An act for raising an additional military force," with sundry amendments; in which they request the concurrence of the Senate.

The amendments were read, and ordered to lie for consideration.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate of the United States:

Agreeably to the request of the Senate, in their resolution of yesterday, I have examined my papers and find no letter from Matthew Nimmo, of the date of November 28th, 1806, nor any other from him of any date but that of January 23, 1807, now transmitted, with all the papers in my possession which accompanied it. Nor do I find any letter from John Smith, of Ohio, bearing date at any time in the month of January, 1807.

Having delivered to the Attorney General all the papers respecting the conspiracy of Aaron Burr, which came to my hands during or before his prosecution, I might suppose the letters above requested had been delivered to him. But I must add my belief that I never received such letters, and the ground of it. I am in the habit of noting, daily, in the list kept for that purpose, the letters I receive daily, by the names of the writers, and dates of time, and place, and this has been done with such exactness that I do not recollect ever to have detected a single omission. I have carefully examined that list from the 1st of November, 1806, to the last of June, 1807, and I find no note, within that period, of the receipt of any letter from Matthew Nimmo, but that now transmitted, nor of any one of the date of January, 1807, from John Smith, of Ohio. The letters noted as received from him within that period, are dated at Washington, February 2, 2, 7, and 21, which I have examined, and find relating to subjects entirely foreign to the objects of the resolution of the 7th instant; and others dated at Cincinnati, March 26, April 6, 13, and 17, which, not being now in my possession, I presume have related to Burr's conspiracy, and have been delivered to the Attorney General. I recollect nothing of their particular contents. I must repeat, therefore, my firm belief, that the letters of Nimmo, of November 28, 1806, and of John Smith, of January, 1807, never came to my hands, and that if such were written, (and Nimmo's letter expressly mentions his of November 28,) they have been intercepted, or otherwise miscarried.

TH. JEFFERSON.

APRIL 8, 1808.

The Message and papers were read, and ordered to lie for consideration.

The bill making provision for the disposal of the public lands in the State of Tennessee, was read the third time; and passed.

CASE OF JOHN SMITH.

The Senate resumed the consideration of the first report of the committee appointed to inquire into the conduct of John Smith, a Senator from the State of Ohio, as an alleged associate of Aaron Burr.

A short conversation arose on the course of proceeding, some diversity of opinion existing as to the propriety of deciding on the report generally or on the resolution of expulsion with which it concludes. When on motion of Mr. FRANKLIN, it was agreed, without a division, to proceed to the consideration of the resolution, as follows:

Resolved, That John Smith, a Senator from the State of Ohio, by his participation in the conspiracy of Aaron Burr against the peace, union, and liberties, of

the people of the United States, has been guilty of conduct incompatible with his duty and station as a Senator of the United States; and that he be therefor, and hereby is, expelled from the Senate of the United States.

Mr. ADAMS then rose and addressed the Senate in substance as follows:

Mr. President:—The question now under consideration appears in strict propriety to import, only a discussion on the point of fact, and its determination can decide only whether Mr. Smith has or has not been a participator in the conspiracy of Aaron Burr, so far as to be no longer worthy of a seat upon this floor. But as the learned and ingenious counsel of Mr. Smith have rested a part of his defence, upon objections against the principles, recommended in the report, and upon which the Senate have hitherto proceeded in this case, I shall be permitted, in the course of the remarks I am now about to submit to the Senate, to make such observations upon the principles contended for by those gentlemen, as have occurred to me, as well as upon the view of the evidence now in our possession, and by which my vote upon the resolution will be governed.

And I cannot but express my satisfaction, that the principles of the report have been brought to so severe an ordeal, and have been called to encounter the whole argument and eloquence of two such powerful adversaries. Far it is from my wish, sir, that those principles should receive the countenance and sanction of this body, unless upon the severest scrutiny they shall be found to stand upon the foundation of reason, of the Constitution, and of precedent. If the principles proposed by Mr. Smith and his counsel are more sound, they ought unquestionably to prevail, and, in order to try their respective validity, my task will be to examine the objections which the learned counsel have urged against the principles of the report, and to animadvert upon those which they have proposed to substitute in their stead.

The first objection is to the jurisdiction of the Senate. It is said that we had no right to try this case at all, or at least that if we were authorized to enter upon it for purposes of inquiry, we had no right to pursue it for purposes of decision. And although this inquiry was originally solicited with earnestness by Mr. Smith himself, I am not desirous of depriving him of the benefit which he can now derive from a denial of our jurisdiction. His counsel now solemnly protest in his name and their own against our indulgence in granting him his request. If indeed they are right, if we have no authority to try, the consequence would lead further than the gentlemen themselves would be willing to allow. Their argument denies the right of the Senate to take this question at all. A vote of rejection would affirm the jurisdiction of the Senate, as much as a vote of adoption. Acquittal implies the jurisdiction of the tribunal, as much as conviction. This is obvious from the practice of the common law courts, where the plea to the jurisdiction must always be decided before the general issue can be tried. Mr. Smith, however, ought not to be denied the advantage of both his grounds. If there are members of the Senate who, though convinced that the facts are sufficient for his expulsion, have been convinced by the arguments of his counsel that they ought not to have been tried here, they will vote against the resolution. If there are others who believe the course we have taken to be correct, but that the evidence is not sufficient to warrant expulsion, they also will vote against the resolution. The result of every doubt, whether of right or of fact, will operate in favor of Mr. Smith. I do not incline, therefore, to their separation.

Let us then examine the reasons upon which the jurisdiction of the Senate has been contested. The two gentlemen, who so ably conducted the defence of Mr. Smith, did not in all respects take the same grounds; but I shall notice the arguments adduced by each of them, which appear to me material, without always discriminating by which of them they were urged.

It was said by the gentleman whom we had last the pleasure of hearing on this subject, (Mr. HARPER,) that if this question were new, he should contend that the power of expulsion, given by the Constitution to each of the two Houses of Congress, was restricted to a mere regulation of police, for the preservation of order, and that they could institute no inquiry into the conduct of their members, except for offences committed in the presence of the House. But this ground was taken only to be abandoned; for the gentleman admitted that the authority of precedent was against him, and to that authority he was willing for himself and his client to submit. I can subscribe neither to the doctrine, nor to the reason for its abandonment. It is a question of Constitutional power; and as such, if the precedents had been ever so much multiplied, they could not avail against the Constitution. In the conflict between two such unequal authorities, that of precedent ought always to yield. Besides, there is but one precedent which could in this case call for submission. I have sometimes heard it said that two precedents were equivalent to a principle; but I never before understood that one precedent could be admitted as of force to silence contradiction. No, sir, there is a better reason than submission to precedent, for rejecting this limitation upon the authority of the Senate. There is no such limitation in the letter of the Constitution; there is none such in its spirit; and to introduce such a limitation, would involve us in the absurdity—to my mind the monstrous absurdity—that a man might be convicted of the most infamous crimes that can disgrace the human character, and, unless their punishment be capital, would be entitled perhaps for years to hold his seat in the Supreme Councils of the nation. This consequence is inevitable; for his constituents cannot recall him; and it has been determined, upon the fullest determination, and by a solemn decision, that a member of the Senate is not liable to the process of impeachment. There is then no remedy but expulsion; for the idea that a man thus blasted in character, and thus debased in conduct, should be permitted to remain a member of the Legislature, is so disgraceful to the reputation of this body, and so per-

nicious to the interest of the whole nation, that it cannot for a moment be admitted. I will only add the remark, that if in this objection there were any substance, it ought to be presented to us in a different form. If any member thinks it has weight, he should offer a resolution to arrest all further proceedings. Its argument is not that this resolution should be rejected, but that the question ought not to be taken. It is in the nature of what we call the previous question.

Another objection, however, was taken, and insisted on with some earnestness by both the counsel. They took a distinction between indictable offences, and offences not indictable. And they contended that the jurisdiction (as they term it) of the Senate is confined to the latter. That for all indictable crimes, if complaint be made to the Senate against one of its members, the Senate might indeed institute an inquiry, but that for trial they must pass a resolution directing the proper law officer to commence a prosecution, and, until its issue, *sequester* the member from his seat.

I well remember, and it will be recollected by many other members of this House, that on the impeachment of Judge Chase, this same distinction between indictable and unindictable offences was made. But the argument resulting from it was directly the reverse of that which is now advanced. It was then insisted, with great plausibility, though I confess not entirely to my conviction, that no offence could be impeachable, unless it were also indictable. And the counsel dwelt with great force upon the dangerous tendency of the principle that a public officer might be removed, "for paltry errors and indiscretions too insignificant to have a name in the penal code." There is so much weight in this reasoning, that before hearing the counsel of Mr. Smith, I did expect it would be applied to his case, that it would be asserted that he had done nothing indictable, and that for no other kind of offence could he be liable to expulsion. The counsel, however, have preferred to try the other side of this two-edged sword, and to insist that offences not liable to indictment, are the only kinds of misconduct for which the Senate can remove a member on an investigation of the facts, by themselves.

They say that by the sixth article amendatory to the Constitution, the trial by jury is secured to every citizen, in all criminal prosecutions. We had occasion yesterday on the court-martial bill, to remark that this article must be understood to have reference to the trials in courts of common law. The soldier, under your rules and articles of war, if criminally prosecuted, must be tried not by a jury, but by a court martial. The trial by jury is secured for the decision of questions arising from what the elementary writers on government call civil rights—the rights which in republican Governments are enjoyed alike by every citizen, as subject to the laws. These are altogether different from political rights; or rights which we enjoy as partakers of the public power; as members of the sovereignty. Among these are the rights of electing and being elected; and the rights of office enjoyed by all public functionaries—such is the right possessed by each of us to his seat upon this floor. One of the greatest writers upon the nature of laws, the ingenious and profound Montesquieu, pointedly cautions his readers and all students in the laws, not to confound the rules and principles belonging to these distinct classes of rights. The trial by jury meant by this article of the Constitution, is reserved for the decision of questions affecting the civil, and not the political rights of the citizen. The sentence is to operate upon his individual person, or property, but not upon his political franchises. To decide upon these, other courses of proceeding are provided—courts martial for military men, impeachment for civil officers, and for members of the Legislative body, the process which we are now pursuing.

But it is said that if the Senate try and decide upon offences committed by their members, they will still remain liable to indictment, and the weight of such a decision by the Senate would have an oppressive influence to dictate the verdict of the jury. This argument pays a very poor compliment to the juries of our country. It rests upon a position, which I trust is altogether unfounded, that they will be governed by a bias in direct violation of their oaths. Our juries, sir, are always sworn to give their verdicts according to the evidence, and certainly no vote of expulsion could be offered in evidence to a jury, upon a criminal prosecution. So far as I have any experience of juries, I have always seen them sufficiently guarded against any bias of external circumstances; especially such as might operate unfavorably to the person upon trial. It is the natural character of our countrymen, and it may be safely relied on. No jury would ever be warped from the line of their duty, to condemn a person accused upon a resolution of this body, which could not be adduced to them in evidence.

We are told that this is the precise distinction between the two cases, which have heretofore occurred in the Senate. That the case of Mr. Marshall was, and that of Mr. Blount was not, an indictable offence, that this distinction perfectly reconciles the proceedings in those two cases. But no such distinction appears upon the face of those cases. From the terms in which the report against Mr. Blount was expressed, it would seem as if the reporters had a doubt of the opposite kind; a doubt like that urged on Mr. Chase's impeachment, that is, whether a member could be expelled for an offence not indictable; for after describing at some length the moral complexion of Mr. Blount's act, they expressly add that it amounts to a high misdemeanor, words which seem expressly chosen to intimate an opinion that the act was indictable; a misdemeanor being the technical language of the law, the special characteristic of an indictable offence.

The course recommended to the Senate, as a substitute instead of that which they have pursued, is itself liable to objections, insuperable to my understanding. I do not find in the Constitution any authority given to the Senate to direct any law officer of the United States to com-

mence a prosecution at law, against one of their members. Neither do I find them invested with the power of sequestering a member from his seat. The gentleman said, it was incidental to the power of expulsion. If so, the incident is much broader than the power itself—the superstructure far more extensive than the base. The power of expulsion operates only upon the member. The State retains all its right to be represented, and only suffers during the time, which it may require to supply the vacated place. But when you sequester a member from his seat, you also sequester his State from its proper representation. You leave her only one member, while all her sisters have two—and if this sequestration is to continue through all the imparlances of a prosecution in a court at law, this suspension of the State's representation might last through a whole Senatorial term of duty. The same principle, in its application to the other House, would often sequester a district of people from their share in the national representation during the full Congressional period—not to mention the opportunities it would afford to personal enemies and political opponents of taking an obnoxious member from his seat, by the mere institution of a criminal process against him. Another obstacle to this procedure arises from the danger of transferring the decision upon the qualifications of your members from your own body to a different, and perhaps a distant tribunal. It proposes to place the trial of the cause under one jurisdiction, and the sentence to be pronounced by another. Instead of acting upon evidence and information exhibited to your own view, you must take upon trust the correctness of proceeding of every county court of criminal jurisdiction throughout the Union, and resign the right of your members to their seats into the hands of every jury in a court of quarter sessions. This consequence is so obvious, and so incompatible with the clearest privileges of this body, that the counsel themselves perceived it, and shrunk back from their own conclusions. They admitted that after the trial at law, the verdict of the jury would not be conclusive, as a ground for the decision of the Senate on the question for expulsion—nay, they admitted that even after a verdict of acquittal, the Senate might again enter upon the inquiry. If the acquittal were on fair and honorable grounds, they thought the Senate would be bound to abide by it, but if it should be obtained upon legal exceptions, or by the exclusion of evidence upon objections to the mere legal competency of the testimony, we might resume the investigation, and proceed to expel the acquitted member, on such evidence excluded by the formal limitations of practice in the judicial court. But, sir, how are the Senate to know, unless it be from the face of the record, upon what grounds the party was acquitted? His plea to the indictment is, "not guilty." This is the issue upon the trial, and under this issue the person accused is entitled to the benefit of every exception of legal form as well as honorable substance. The jury are judges both of the law and the fact. The testimony, whether admitted or excluded, seldom appears upon the record. The jury on combining every point, both of law and of testimony, find it sufficient to convict the party accused, and they return a general verdict in the two words of his plea "not guilty." They give no reason for their verdict. The jury at Richmond, indeed, on the trial of Mr. Burr for treason, did assign a reason—but this was an extraordinary exception—they are not obliged to give their reasons, and they scarcely ever do give them. How then are we to know whether the acquittal was honorable or otherwise, by receiving testimony? Why then we return to that original foundation of our own sound discretion, upon which I have contended that our authority rests. We send the party to a court of law for trial, and the court sends him back to us for two—one for himself, and one for the jury which acquitted him. We go from discretion to law; and then, with an aggravated burden, return from law to discretion.

Let us, however, for a moment suppose that this doctrine of Mr. Smith's counsel is correct, and that our authority to try this cause is appellate, and not original. The consequence is, that we ought now to do what they tell us we ought to have done at first. Their argument invites us now to sequester this gentleman from his seat, and send him to a circuit court of the United States for trial by jury, with directions to the proper law officer to commence a prosecution against him, and with the whole mass of evidence which has been here produced against him; that the personal attendance of the witnesses may be obtained at the proper time and place. If, sir, the object were to deprive Mr. Smith of his seat for the remainder of his term, this process would answer as effectually as the adoption of the resolution before you. I must, therefore, believe that it cannot be Mr. Smith's desire that we should, on this occasion, renounce our own course, to follow that inculcated upon us by his counsel.

Having, then, disposed of the objections to the jurisdiction of the Senate, let us pass to those which have been urged with equal solemnity against the species of evidence which has been received. I listened with great attention to the comparison drawn by the gentleman who insisted most upon this point, and, in particular, to the parallel which he drew between the relative merits of written and oral testimony. There are doubtless advantages to be derived from the examination of witnesses in person, which cannot be communicated to written depositions. But theoretical perfection must necessarily yield to possible practice. The evidence on such an inquiry as this, is, from the necessity of the case, all voluntary. The member whose conduct is implicated, has great advantages for defence, which he would not possess on a trial in a court of law. He is defended by the able counsel admitted at your bar, when there is no legal counsel against him. He has the opportunity to collect, with all the industry and activity inspired by his interest, every particle of evidence that can be brought in his favor, while that which appears against him, must come without search; must present itself

uninvited. No member of this body can be charged with the duty, and surely none would spontaneously undertake the task of summoning witnesses to attend here in person from the two extremities of the Union; nor, were they summoned, is it at all clear that they would be compelled to attend. To call exclusively for the evidence of witnesses in person, is therefore to strike at the root of the Senate's power to pursue such an inquiry as this. It is to make the power expressly delegated nugatory. So at least it would be in the great number of cases; and, in the present instance, it would require us to go through this whole investigation again. We must consider everything hitherto done as an absolute nullity, and send for perhaps an hundred witnesses, from New Orleans to Newtown, in Connecticut, to assemble here at some day of the next session, (we shall certainly not have time for it during the present,) to testify to the conduct of Mr. Smith, and to the characters of the witnesses for and against him. This objection, therefore, if valid, would, in its operation, be as unfriendly to Mr. Smith as the last. As that would send him to a court of law for the trial of a title extinct before it could be confirmed, so this would postpone the question upon the right to his seat, until the seat itself will be vacated by the lapse of time. It is, I presume, from this necessity of the case, that in the British House of Commons, proceedings of this nature are always in a great degree summary, and that the evidence upon which they proceed is subject to none of the restrictions to which they so rigidly adhere in their courts of law. As our power of expulsion is granted in the Constitution, and as it was no doubt originally derived from the English Parliamentary usage, I thought it my duty to consult with as much care and attention as a limited time would allow, the journals and debates of the House of Commons in England, to ascertain what their practice had been in these cases. Nor could I hear, without astonishment, the assertion so confidently made by one of the gentlemen of counsel for Mr. Smith, (Mr. Key,) that no instance of this summary proceeding could be found in the British Parliament, unless it were in the time of Cromwell. Where the gentleman obtained his information, it is not my business to inquire; but I can say that, in my examination of the journals, I have been unable to find a single instance in which any other than a summary process is pursued, or in which the judicial rules for authenticating evidence are required. That this, however, may no longer rest upon assertion, I shall now read you, sir, two cases which occurred—not in the time of Cromwell, but in that of Queen Anne. The first is that of Thomas Ridge, which, in the Parliamentary Debates, is related thus:—(Vol. 14, p. 177.)

"On the third of January, Mr. Harley, Chancellor of the Exchequer, acquainted the Commons, 'that on examinations relating to the Navy, taken before the Lords Commissioners of the Treasury, some considerable abuses had been discovered in the victualling, and that a member of that House was named therein: upon which the Commons resolved to present an address to the Queen, to have those examinations laid before them: which being done accordingly, and the same referred to a committee, Mr. Ridge, the member named therein, desired that he might attend that committee to make his innocency appear.' He attended the committee; they reported against him, and, afterwards, on the 15th, 'the commons took into consideration the report from the committee appointed to inquire into the abuses of the victualling; and the report being read, it was unanimously resolved, that it appears to this House that in the management of Her Majesty's brew-house, as well as in the contracts for furnishing the Navy with beer, there have been many notorious embezzlements and scandalous abuses, to the defrauding the public of great sums of money, to the injury and discouragement of the seamen; and ordered that the commissioners of victualling have a copy of the said report.'

"After this Mr. Ridge was heard in his place to the matter of the report relating to him, and being withdrawn, it was resolved—

"1. That it appears to this House that Thomas Ridge, Esq., a member of this House, is guilty of great frauds and abuses, by having contracted to furnish five thousand five hundred and thirteen tons of beer upon his own account, and two thousand seven hundred and four tons of beer in partnership with Mr. Dixon, and having received bills for the whole, although he delivered but three thousand two hundred and thirteen tons of the first, and one thousand two hundred and sixty-nine, upon the latter contract.

"2. That Thomas Ridge, Esq., be for the said frauds and abuses expelled this House.

"3. That an humble address be presented to Her Majesty, that she will be pleased to give direction to her Attorney General to prosecute the said Mr. Ridge, for the said frauds and abuses—p. 181."

Shall we now be told, Mr. President, that the practice of the English House of Commons, on cases of expulsion, is never summary; that they first send the member to a court of law for his trial; that they receive against him none but judicial evidence? Here is a case, not in times of violence and faction; not for political motives, or to remove an able and obnoxious member, but for mere fraud and embezzlement; the member is merely named in certain written examinations; on that evidence, after reference to a committee, and their report, he is expelled, and immediately after, an address to the Queen is voted, to direct a prosecution against him for the same acts.

The next case is that of Mr. Walpole. He was implicated in a report from the Commissioners of public accounts; he was heard before them, and there had a witness sworn to an affidavit in his favor. On their report, they presented to the House the depositions of this witness, which were received and read. Another witness was called in and examined, apparently not on oath, before the House itself. Mr. Walpole was heard in his place, and withdrew; after which the House came to the following resolutions:

"1. That Robert Walpole, Esq. (a member of this House,) in receiving the sum of five hundred guineas, and in taking a note for five hundred pounds more, on account of two contracts, for forage of Her Majesty's troops quartered in North Britain, made by him when

Secretary at War, pursuant to a power granted to him by the late Lord Treasurer, is guilty of a high breach of trust and notorious corruption."

"2. That the said Robert Walpole, Esq., be for the said offence committed prisoner to the Tower of London, during the pleasure of this House; and that Mr. Speaker do issue his warrant accordingly.

"Then a motion being made and the question put that the House should adjourn, it passed in the negative; and after a small debate it was resolved (though by a small majority of about thirty voices,) that the said Robert Walpole, Esq. be for the said offence also expelled the House."

The only cases of expulsion which I recollect to have occurred during the present reign are those of Mr. Wilkes, which occasioned so great a fermentation in that country, from a subsequent question raised by the House of Commons in their decision that by the mere fact of expulsion he was incapacitated from being elected again. I shall not refer to this case at all as a precedent, but will barely read to you a few remarks made on it by Mr. Belsham, an historian who has been censured as leaning to an excess in favor of republican principles. He says:

"It could not be denied that the House of Commons had ever exercised a judicial authority, *which could in no other hands be so properly placed*, in determining upon the validity of returns, and the qualifications of their own members. This authority might undoubtedly be abused, or indiscreetly exercised, but all power is in its own nature liable to abuse; and if so vague an objection be admitted, the powers vested in all political bodies, however constituted, must be annihilated, and the bonds of civil society are at once dissolved. The power of expulsion, for such offences as appear to the House to render any of its members unworthy of the trust reposed in them, had been exercised in numerous instances, from time immemorial;" and afterwards, "It must nevertheless be acknowledged, that a discretionary power of expulsion is liable to be perverted to very bad purpose; and, therefore, it was judged proper by an act passed in the course of the ensuing session to specify the offences which shall in future render incapacitation the necessary result of expulsion."

There was one other observation of the same gentleman, (Mr. KEY,) contesting a position in the report of the committee, which I think it necessary to notice, because it is the renewal of an objection already refuted upon this floor. In referring to the proceedings on the expulsion of Mr. Blount, the report says:

"In that case the member implicated was called upon, in the first instance, to answer whether he was the author of a letter, the copy of which only was produced, and the writing of which was the cause of his expulsion. He was afterwards requested to declare whether he was the author of the letter itself; and declining in both cases to answer, the fact of his having written it was established by a comparison of his handwriting, and by the belief of persons who had seen him write, upon inspection of the letter. *In all these points the committee perceive the admission of a species of evidence which in courts of criminal jurisdiction would be excluded.*"

Very soon after the report was made, Mr. Smith, in a letter, I think, addressed to you, Mr. President, asserted that this was a mistake on a point of law—that the comparison of hands, and inspection by persons who had seen the party write, was evidence admitted in every day's practice on criminal prosecutions at law. Part of this doctrine was afterwards disclaimed in debate on the floor. It was acknowledged that comparison of hands is never admitted as evidence on criminal trials. I know very well that inspection of the handwriting, by persons who have seen the party write, is evidence at law; but it must be upon oath. In Mr. Blount's case it was received by the committee, without oath; and it was in allusion to this that the report included it as part of the testimony admitted there, though it would have been excluded from a court of law. I know also, that the same testimony was in that case afterwards given in the Senate, upon oath. The report never meant to say that formal evidence was excluded. It only noticed the informal evidence which was admitted.

I have now finished my remarks upon that part of Mr. Smith's evidence, which rests upon the supposed irregularity of the proceedings which have hitherto been sanctioned by the Senate, on this investigation, and upon objections against the principles maintained in the report of the committee. The question on the facts remains still to be discussed.

What, then, is the evidence of Mr. Smith's participation in the conspiracy of Aaron Burr?

Since the resolution now under consideration was first offered to the Senate, the state of the evidence has very considerably changed; in some respects favorably for Mr. Smith's defence; in others, to my mind, more inauspiciously. The testimony of Elias Glover, I consider as totally discredited; but since the deposition produced by Mr. Smith to the committee, with his answers to their queries, I gave very little credit to that witness, even before the accumulation of evidence against him, which Mr. Smith has since obtained, and recently exhibited to the Senate. Even then I thought the testimony of Glover could be of very little weight, otherwise than as it was confirmed by that of others. With the same exception, I now give it no credit at all. Stripped of the confirmation which it may receive, from admitted circumstances from other testimony, and from Mr. Smith's own acknowledgments, I consider the case as if no affidavit of Glover belonged to it.

But if the credit of Elias Glover has been annihilated, that of Peter Taylor has been beyond all controversy confirmed. In his answers to the committee, Mr. Smith denied almost all the material facts, (and material in the highest degree they are,) attested by Peter Taylor, respecting him, on the trials at Richmond, and he declared his belief that he could prove, by witnesses of the first respectability, his want of character as a man of truth and veracity. Since then, Mr. Smith has had the fullest opportunity to cross-examine the man himself, and to take testimony to his general character. And what is the result? The general character of Peter Taylor has risen purified

from the furnace. In every witness of whom the question was asked, he had found a panegyrist. One or two mistakes of circumstances perfectly immaterial to Mr. Smith, or to any other person implicated, have been discovered in a lynx-eyed scrutiny of his testimony at Richmond; and the candor with which he instantly acknowledged them, and the firmness with which, on Mr. Smith's inquiries, he persevered in asserting all the important facts of his narrative, have given to his evidence a much greater weight than it could claim before. So decisive indeed is it, that Mr. Smith's counsel now solemnly admits those facts which Mr. Smith had as solemnly denied in his answer; and argues with his usual ingenuity to dispel their effect.

Of Colonel James Taylor, the testimony has been in one respect counteracted, and in another much strengthened. His character was so well known, and so universally respected, that no attempt could be made to assail it, other than on the basis of a supposed mistake. This mistake, Mr. Smith, in his affidavit, made before he left this place, asserted that he expected to prove by General Findley; the only third person in hearing, according to Colonel Taylor's statement, when the conversation, occasioned by the *Querist*, occurred. Mr. Smith returns without the deposition of General Findley; but in its stead he brings a deposition of his friend Dr. Sellman, and also a private letter to him from the same Dr. Sellman, intimating that General Findley could not confirm Colonel Taylor's testimony; but with a broad insinuation that General Findley would not give that deposition in favor of Mr. Smith, which he ought, for fear of losing his office. On the fact of this particular conversation, then, we must balance the weight of testimony apparently contradictory. It is barely possible that the conversations mentioned by the two witnesses, were not the same, but held at different times; and as evidence seemingly variant between two persons of character, ought always, if possible, to be reconciled, perhaps the fair and candid construction would be that. If, however, it was the same conversation, we must be reduced to the necessity of choosing which of the two witnesses has been most correct in his recollection. I cannot but consider the express testimony of Colonel Taylor, confirmed by the silence of General Findley, as that which is best entitled to our belief. Colonel Taylor, we know, was on this occasion a most reluctant witness; he had been the friend and intimate acquaintance of Mr. Smith; his principle obviously was to say as little as possible, consistent with his obligations to speak the truth. The impressions on his mind did not stand singly upon his judgment; he had compared them with those of General Findley, and by that comparison had found them confirmed. They had not slumbered upon his memory for a length of time, so as to lose their distinctness. He had communicated them to the Secretary of State in his letter of the 13th of October, 1806, written a very few days after the conversation was held. An extract of this letter is in evidence before us, and it tallies exactly with Colonel Taylor's testimony given to the committee and before the Senate. The impartiality of Colonel Taylor, his candor, his tenderness for Mr. Smith, the excellency of his general character, and his appeal to the recollection of another respectable witness in confirmation of his own, all combine to give his testimony the highest claim to our belief. With Dr. Sellman I have no personal acquaintance, and can, therefore, speak of him only upon the evidence exhibited here on this occasion. He appears at least in the character of a very ardent partisan of Mr. Smith. In the newspapers transmitted to us, I see his name at the foot of several very violent publications, which have not been read, but which show that fifteen months ago he had in some sort staked his own character upon the reputation of Mr. Smith. A number of depositions concur to prove that he, in company with a man who has since been convicted of an atrocious robbery, was at the head of a party who burst open the doors, and broke in upon a meeting of private citizens assembled to pass certain resolutions unfavorable to Mr. Smith, and threatened them with a coat of tar and feathers. The insinuation in his private letter to Mr. Smith, against the fair fame of General Findley, bears no distinguishing features of an ingenuous mind. I cannot believe that General Findley, a man of honorable consideration in society, holding an important public trust, could have been actuated by such unworthy motives in declining to contradict Colonel Taylor's deposition. Could he have done it consistently with truth, he had every inducement that could operate upon generous feelings to do it. His contradiction would not have impaired the reputation of Colonel Taylor. It would not have induced a probability that he was mistaken. But to Mr. Smith it was of the first importance—his reputation in the world, his seat in the councils of the nation, the comfort of his life, the peace and happiness of his family, were all at stake, and called in the most imperious manner for the testimony of a man, who, by merely declaring that he had understood his meaning differently from the witness appealing to him, might have removed from him the burden of this imputation. It is impossible to believe that he was deterred from such an act of signal justice, by the base and contemptible fear of losing his office.

But, in addition to the evidence exhibited before the departure of Mr. Smith from this place, a multitude of new depositions are now produced; most of them obtained by himself, for the purpose of his own exculpation, and two or three furnishing strong additional circumstances against him; even those which he brings for his own discharge, have disclosed a fact of the highest import, in my estimation, very unfriendly to his defence. I mean his studious avoidance of appearing before the grand jury at Frankfort, in Kentucky, on the second complaint against Burr, in December, 1806. From the fullest consideration which I have been able to bestow upon the whole mass of this additional testimony, I have not discovered in it any ground sufficient for the rejection of this resolu-

tion. I still am convinced that it ought to pass. The most material of all the witnesses, to demonstrate that conduct of Mr. Smith, which, in my mind, imposes upon the Senate the necessity of coming to this decision, is *himself*. It is the coincidence between his course of conduct and that of Mr. Burr; his own tardy acknowledgments; his own alternate denials and admissions; his own consciousness of participation in unlawful proceedings, and the testimony of his own witnesses, which constitute the most irresistible evidence against him. The other witnesses and the circumstances of the times, chiefly serve to corroborate and elucidate, what he and his witnesses show, in feeble characters, and indistinct obscurity.

To exhibit this coincidence of conduct between Mr. Smith and Mr. Burr, in that light of which it is susceptible, it may be necessary, Mr. President, to review the transactions of Col. Burr, in relation to these projects, from the time when he descended from that chair, in which you now sit, until the arrival of the President's Proclamation at Cincinnati, on the 13th of December, 1806; and to compare the conduct of Mr. Smith, contemporaneous with the several events of public notoriety, and with the facts testified by the witnesses, in the volume of evidence taken at Richmond, and transmitted to Congress by the President of the United States, with the purposes and views of Mr. Burr, at the several stages in the progress of this conspiracy.

On the 3d day of March, 1805, the term of Mr. Burr's career as Vice President of the United States expired. How long, before that time, he had been revolving in mind his designs upon the western division of the Union, we need not inquire; but that they were then entirely new, there is every reason to believe. It is known to many, perhaps to all the members of this body, who were in the Senate at that time, that Mr. Burr, during that period, paid a very studied attention, and professed a peculiar respect to Mr. Smith. Very soon after this, in the Spring, Summer, and Autumn of 1805, Mr. Burr was traversing the Western States and Territories, down to New Orleans, busily engaged in making every preparation possible, at that time, for the campaign of the ensuing year; even then we find, from a great variety of testimony, that Cincinnati, Mr. Smith's place of residence, was a spot where a great portion of Mr. Burr's exertions had been made; even then, from the depositions produced by Mr. Smith, it appears that a Western empire, with *Cincinnati* for its capital, had been fully disclosed to William McFarland. This importance of Cincinnati may serve to explain Mr. Smith's observation to Major Riddle, that, if Burr succeeded, he would prefer living at Cincinnati, rather than at Baltimore or Philadelphia.

In the Winter of 1805, Mr. Burr returns, to spend his time at this place, and at Philadelphia. Here it was that he made his overtures to Mr. Eaton, from whose testimony, I must ask your permission, sir, to read two or three extracts, showing how far his projects were then matured:

"Col. Burr now laid open his project of revolutionizing the territory west of the Alleghany; establishing an independent empire there—New Orleans to be the capital, and he himself to be the chief; organizing a military force on the waters of the Mississippi, and carrying conquest to Mexico."

"He stated to me that he had in person (I think the preceding season) made a tour through that country; that he had secured to his interests, and attached to his person, the most distinguished citizens of Tennessee, Kentucky, and Territory of Orleans; that he had inexhaustible resources and funds; that the army of the United States would act with him; that it would be reinforced by ten or twelve thousand men from the above-mentioned States and Territory."

"He had mentioned to me none, as principally and decidedly engaged with him, but General Wilkinson, a Mr. Alston, who, I afterward learned, was his son-in-law, and a Mr. Ephraim Kibby, who, I learned, was late a captain of rangers in Wayne's army." "Of Kibby, he said, that he was brigade major in the vicinity of Cincinnati, (whether in Ohio or in Kentucky, I know not,) who had much influence with the militia, and had already engaged the majority of the brigade to which he belonged, who were ready to march at Mr. Burr's signal. Mr. Burr talked of this revolution as a matter of right inherent in the people, and Constitutional; a revolution which would rather be advantageous than detrimental to the Atlantic States; a revolution which must eventually take place; and for the operation of which the present crisis was peculiarly favorable; that there was no energy, to be dreaded, in the General Government, and his conversations denoted a confidence that his arrangements were so well made that he should meet with no opposition at New Orleans, for the army and the chief citizens of that place were ready to receive him."

Such, then, was the plan of Mr. Burr, and such, by his declarations, the state of his preparatory measures in the Winter of 1805-'6; and I have read the part of his statement relative to Major Kibby, (and I mention it now, lest I might hereafter forget it,) because it may serve to explain what Mr. Smith said to Major Riddle just after the arrival of the President's Proclamation at Cincinnati; that he (Smith) knew more of Burr's plans than any man in the State of Ohio, except *one*. Here, it seems, there was one man, who knew them very sufficiently; and it appears, by the depositions produced by Mr. Smith, that William McFarland also knew a great deal of them.

Let us follow Mr. Burr to Philadelphia, and notice some particulars of his conversations there with Commodore Truxtun, in July, 1806. I shall read from the Commodore's testimony only those parts which may serve best to connect the chain of events, and to show the consistency of Burr's purposes. He had previously, in the Winter, talked with that gentleman about land speculations, but in July, 1806, "He observed, (says the 'Commodore,) that he wished to see, or to make 'me (I do not recollect which) Admiral; for he 'contemplated an expedition into Mexico, in the 'event of a war with Spain, which he thought 'inevitable. Mr. B. then asked me if I would 'take the command of a naval expedition. I 'asked him if the Executive of the United States 'was privy to or concerned in the project. He

'answered me emphatically that they were not. 'I told Mr. Burr that I would have nothing to do 'with it." "Mr. Burr observed that, in the event 'of a war, he intended to establish an independ- 'ent Government in Mexico; that Wilkinson, the 'Army, and many officers of the Navy, would 'join. I replied, that I could not see how any of 'the officers of the United States could join."

"Mr. Burr asked me if I would not write to 'General Wilkinson, as he was about to despatch 'two couriers to him. I told him that I had no 'subject to write on, and declined writing."

This conversation was about the last of July; and I must now recur to one or two passages in the famous ciphered letter to Gen. Wilkinson. In the copy I have before me, it has no date,* but the formal letter of introduction, which Mr. Swartwout carried with it, is dated 25th July, 1806. It was, then, written on or near the same day when Mr. Burr had his last conversation with Commodore Truxtun.

This letter indicates that Mr. Burr was on the point of departure for the execution of the enterprise, which it declares, he had actually commenced; that detachments were to rendezvous on the Ohio, 1st November, and to move down rapidly from the falls on the 15th of November, with the first five hundred or one thousand men, in light boats, constructing for that purpose.

It adds: "Burr will proceed westward, first 'August, never to return; with him goes his daugh- 'ter; the husband will follow in October, with a 'corps of worthies."

Finally, the letter contains also this passage: "Already are orders to the contractor given to for- 'ward six months' provisions to points Wilkin- 'son may name; this shall not be used until the 'last moment, and then under proper injunc- 'tions."

Whether Mr. Burr did actually leave Philadelphia on the 1st of August, as his letter announces, I am unable to collect from any of the testimony that has fallen under my observation; but on the 21st of August, he had reached Pittsburg; and there he invited himself to dinner the next day with Col. Morgan, in a manner precisely similar to that in which he so shortly afterward invited himself to pass five or six days at the house of Mr. Smith. At Colonel Morgan's, he dined and lodged one night. I shall not recur specially to the remarkable testimony of Colonel Morgan and his son, for it must be fresh in the recollection of every one who hears me. I shall barely notice that, during his short visit here, he broached all his doctrines respecting the imbecility of the present Administration, and the right, the interest, and the provocations which the Western people had to separate them from the Atlantic States. He was here commencing that mode of operation for effecting the dismemberment of the Union, which, in his subsequent letter of the 26th October to Mr. Smith, he states to be the only mode in which that object could be accomplished. His experiment did not commence in the right place. His attempt to tamper with men of honor and sentiment, met the reception it deserved. He left the house before breakfast the next morning.

On the 1st of September, he had descended the river and was upon Blannerhasset's island; and, on the 4th of the same month, appeared in the newspaper, at Marietta, the first number of the *Querist*, which was followed by two or three more. I have been unable to obtain a copy of these papers, but the substance of their contents is well known. Their object was to prepare the minds of the people, in that part of the country, for a separation from the Atlantic States; they dilated upon all the topics so familiar in the mouth of Mr. Burr; and so much were they identified with his doctrines, that Dr. Wallace, one of the witnesses at Richmond, with whom Burr had conversed on these subjects in the Summer of 1805, declares that, on his first perusal of these papers, he drew from their internal evidence the conclusion that the ideas were Burr's, and the language Blannerhasset's. Blannerhasset was, indeed, the writer, and precisely at the same time and immediately after, was ranging the country with the activity and spirit of a recruiting officer —promising the plunder of banks at New Orleans and of Mexican mines—settling the hereditary succession of the fancied Crown; and teeming with embassies and empires.

On the very same day that the first number of the "Querist" appeared at Marietta, the 4th of September, Mr. Burr, by the pencilled note, invites himself to the house of Mr. Smith, in Cincinnati, where he is hospitably received and entertained five or six days. During this time, he spends an evening at William McFarland's, where he holds exactly the same kind of conversation about the impotence of Government, the rights and wrongs of the Western country, and their inducements to separate from the rest of the Union. About the 10th of September, he leaves Mr. Smith's; proceeds to Lexington, in Kentucky, where he arrives and concludes his contract for the Washita lands, before the close of that month.

Mr. Smith, in his answers to the queries of the committee, (an answer which he offered to make upon oath,) says that, on this visit, Colonel Burr tarried with him five or six days, and then progressed on his journey—for what he next adds, I must refer to his own words:

"But he did not disclose to me ANY object he had in view. Meanwhile the voice of suspicion and jealousy was raised against him, and although I knew as little of his objects in visiting the Western States as either of you, still, as I had entertained him in conformity to the customs in which I was reared, and according to my own sense of propriety, I felt uneasiness and jealousy in consequence of these reports."

The character of Colonel Burr is now generally well understood; and, when combined with the circumstances I have just mentioned, and with others which I am about to mention, it is difficult to conceive that his visit to Mr. Smith at this time should have been made without design. For the projects he contemplated, and which he was

* It was dated 29th July.

then attempting to carry into execution, Mr. Smith was a man of the very first importance. As a Senator of the United States, it is obvious how useful his services might become, in his attendance here, during the session of Congress. As a contractor for building gunboats, and for supplying the Army with provisions, he could, without exciting suspicion, and without danger of detection, be of the greatest use in performing the same services, and furnishing for Mr. Burr the same kind of supplies. As a man of influence and consideration in the State to which he belonged, his aid in propagating the doctrines of disunion, and in contributing to the accomplishment of that end, were not less desirable. The motives of profit and of distinction which might be held up to his expectations, were of a nature as persuasive upon a mind, which could be as susceptible of receiving them, as those of making Truxtun an Admiral, or Eaton a General. Is it, then, credible that, while Burr was proceeding upon his business, with all the activity and energy of his character; while his boats were building and his provisions collecting; while he was obtruding almost upon every stranger and transient acquaintance, that he found, in his way, the opinions which were suitable to his purpose—while Blannerhasset was filling the newspapers with rebellion, and engaging men for war, under his standard—is it credible, I say, that Burr should have solicited entertainment under the roof of Mr. Smith, and obtained it, for five or six days, without so much as intimating to him any one of his purposes? Is it credible that, in the course of that visit, and in the intimacy between the parties, which the whole transaction so strongly implies, amidst the violent suspicions with which Mr. Burr, even then, was notoriously surrounded, there should never have occurred to the friendly solicitude of Mr. Smith a single inquiry which would have led to a disclosure, real or pretended, of the object of Mr. Burr's visit, and of his progress through the Western States? Should this be deemed, under all these circumstances, a credible thing, I then ask, how Mr. Smith's asseveration that Burr did not then disclose to him ANY object he had in view, is to be reconciled with Mr. Smith's affidavit of 6th January, 1807, in which he says, "Burr did then speak to him about his project of settling a large tract of his Washita lands."

It is one of the peculiarities attending Burr's conduct, through the whole of his conspiracy, that he had always an ostensible object, to serve as a mask to the real design. One of the difficulties and inconveniences of this method of transacting business, is, that in exhibiting the purpose, which is meant only for show, it is apt to be materially variant from itself at different times. It is often variant, not upon trivial incidents, with which the best human memory cannot be accountable for perfect accuracy, but upon the most essential part of the story. It is inconceivable to me, that, at that precise period of Mr. Burr's experiment upon the Western States, he should thus have been, at his own desire, the guest of Mr. Smith, five or six days, without making to him any communication of his real views, while he was so liberally disseminating them to others far less intimate to his acquaintance, and far less important to his purposes—and when we find Mr. Smith's own narrative, upon this very point, so variant from itself at different times, how can we suppress the belief that the real story was not that which could safely be told?

The conversation to which Colonel James Taylor attests, occurs within a very few days after the departure of Mr. Burr from Mr. Smith's house, at this period. The subject of that conversation was the separation of the States. Mr. Smith takes pains to circulate that *Querist*, which was to scatter the seeds of disunion throughout the Western country. Mr. Smith adopts its arguments as his own; and adds others of the same tendency to assist its effects. Mr. Smith contends that these doctrines, however obnoxious then, *in less than two years would become* ORTHODOX. Is there no knowledge and participation in Burr's projects on the face of these expressions? We are told they were speculative opinions; and we hear complaints that a man should be held accountable for his political speculations. But when speculative opinions are associated with military preparations, and a formidable enterprise in the very process of execution, then, sir, they assume a very different complexion from that of free and legitimate discussion. Speculative opinions, at all times, have such an influence upon practice, that I hold it not very justifiable in a man vested with public trust, to speak in terms of approbation, of a dismemberment of this Union, upon any contingency, or at any distance of time. We ought to deprecate this greatest of all possible calamities, for our posterity as well as for ourselves. Yet, I acknowledge, that even these dangerous opinions, when merely speculative, may be expresssed without evil intentions, and ought not to draw the weight of public censure upon the person using them, in the form of a decision of this body. It is the time, the occasion, the circumstance, upon which this speculative opinion was divulged, which display it as evidence of Mr. Smith's participation in Burr's conspiracy against the Union.

We have followed the course of events until the close of September, about which time Blannerhasset follows Mr. Burr into Kentucky. In the course of that and the following month, the preparations and conversations of both these personages: the numbers of the Querist, and certain publications of an opposite character, which appeared in another newspaper, called the Western World, had roused the suspicions, the anxieties, the resentments of the people in that part of the Union, to the highest degree. About the 20th of October, Mrs. Blannerhasset found it necessary to despatch Peter Taylor from the island, into Kentucky, for the purpose of warning Burr, that he could not, with personal safety to himself, return to the island. Taylor was to go first to Chilicothe, then to Smith's, at *Cincinnati*; and there he was to be told where Burr and Blannerhasset were to be found. At this time, it was no longer

safe to inculcate the disunion of the States. The people there, I thank God, were not to be deluded by Mr. Burr's mode or by any other mode of effecting a dismemberment. They were true to themselves and to their country. The public odium had arrived at such a pitch, that it might not be advisable for Mr. Smith to appear so intimate with Burr, as to know where he was to be found, and it might also be necessary for him to have the ostensible object of Burr's purposes ascertained. For, although he says that, when Burr was with him in September, he had talked about the settlement of the Washita lands, yet, at that time, the purchase was not made.

This view of the state of things at that time will explain the particulars of Peter Taylor's testimony. When he arrives at Mr. Smith's, and inquires for Burr and Blannerhasset, Mr. Smith answers, that he knows nothing of either of them. That Taylor must be mistaken; that was not the place; but finding Taylor to be Blannerhasset's servant, he tells him, "he expected they were at Lexington, at the house of a Mr. Jourdan." Now, sir, what does this denial, in the first instance, that he knew anything of them; and this pointing so precisely afterwards to the very house where they were to be found, indicate? The counsel for Mr. Smith says, that Taylor was sent there for Mr. Burr's great-coat; nothing of that appears in the evidence. But, from Taylor's declaration, it appears that he was sent there to ascertain where Burr and Blannerhasset were to be found; that Mr. Smith, at first, denied knowing where they were, and afterwards told him the very house in Lexington where they were to go for them. As the sole object of Taylor's going to Mr. Smith, was to inquire where Burr and Blannerhasset were, and as, before, he left the house, Mr. Smith gave him a letter for Burr, under *cover*, to Blannerhasset, it is impossible to doubt the correctness of Taylor's testimony in that respect; that Mr. Smith told him where to go. The inference is irresistible. This accurate knowledge where they were, and this express denial of that knowledge to a man whom he supposed a stranger, is a proof that, even then, Mr. Smith knew much more than he was willing to avow.

The remainder of Peter Taylor's story, so far as it respects Mr. Smith, all concurs to establish the same fact. Mr. Smith's anxious inquiries for the *news*; for what was passing; for what was *said*, about General Wilkinson; the charge to Peter Taylor not to go to a tavern, lest he should be sifted with questions; and, finally, the letter, professedly to Blannerhasset, but enclosing one to Mr. Burr, all combine to exhibit a state of mind agitated and alarmed, studious of concealment, and fearful of detection.

Above all, consider the inquiry, what was *said* about General Wilkinson. What could have associated in a mind utterly ignorant of all Burr's projects, inquiries about Wilkinson, with the then situation of Burr and Blannerhasset? Recollect the passage of the ciphered letter: "Already has 'the contractor orders to furnish six months pro-'visions at the points Wilkinson shall name; 'this shall be used only at the last moment, and 'then under proper injunctions."

Mr. Smith has, at one time, denied all the material facts attested by Peter Taylor; and he attempted to disgrace his character; so little has he been borne out by his own evidence, now produced, that he formally admits the very facts he had denied. The same course has been pursued with regard to Colonel James Taylor's testimony. Sir, this treatment of the witnesses is not calculated to inspire confidence in the solidity of Mr. Smith's defence. Unfounded attacks upon the character of a respectable witness, not only confirm, but aggravate the weight of his testimony.

If, however, the testimony of Peter Taylor needed confirmation, it would be found in the substance of the letter itself, of which he was the bearer, and of the answer to that letter. To these two documents, I now ask the particular attention of the Senate. The letter is dated 23d October, 1806, and says: "I beg leave to inform you 'that we have, in this quarter, various reports pre-'judicial to your character. It is believed by many 'that your design is to dismember the Union; al-'though I do not believe that you have any such 'design, yet, I must confess, from the mystery and 'rapidity of your movements, that I have fears, 'let your object be what it may, that the tranquil-'lity of the country will be interrupted, unless 'it be candidly disclosed, which I solicit, and to 'which, I presume, you will have no objection."

Now, what is the solicitude manifested in this letter? It is not so much, that Mr. Burr's object should be declared, *not* to be the dismemberment of the Union. It asks for something which may be *told*, to prevent the tranquillity of the country from being interrupted. And it very explicitly intimates what must be *denied*. It is an answer of a very peculiar kind, which appears to be wanted; an answer contained in the letter itself. A voucher is wanted to deny the project for dismembering the Union; and to speak with certainty of the ostensible object. This was the settlement of the Washita lands. Mr. Smith, in one of his narratives, says that Burr had talked with him on this subject in September before; but the purchase of the lands was not then concluded. It was uncertain whether that could now be spoken of as the professed purpose, and Mr. Smith's letter was well adopted to obtain that certainty.

Mr. Burr's answer appears perfectly to have understood the object of these inquiries. Much has been said by Mr. Smith about the apparent *frankness* and *candor* of this letter, and on this document he relies, with great emphasis, as a complete justification of all his subsequent confidence in Mr. Burr. To me, sir, it bears a very different aspect. Considering it in the light of an answer to the solicitude of a man altogether unconscious of Mr. Burr's real designs, and aware of the extremely suspicious appearances in which the conduct of Mr. Burr was involved, this answer appears to me calculated for anything rather than to restore confidence. To manifest its real character, let us attend to some of its most remarkable passages. Mr. Burr says:

"If there exists any design to separate the Western from the Eastern States, I am totally ignorant of it. I never harbored or expressed any such intention to any one, nor did any person ever intimate such design to me. Indeed, I have no conception of any mode in which such a measure could be promoted, except *by operating on the minds of the people*, and demonstrating it to be their interest. I have never written or published a line on this subject, nor ever expressed any other sentiments than those which you have heard from me in public companies, at Washington and elsewhere, *and in which I think you concurred.*"

At this passage there are the following notes by Mr. Smith:

"J. Smith has heard Colonel Burr and others say, that in fifty or an hundred years, the territory of the United States would compose two distinct Governments."

I return to the letter:

"I have no political view whatever. Those which I entertained some months ago, and which were communicated to you, have been abandoned."

Here is another note by Mr. Smith:

"J. Smith presumes that Mr. Burr refers to an invitation to settle in Tennessee, of which he heard him speak."

The letter proceeds:

"Having bought of Colonel Lynch four hundred thousand acres of land on the Washita, I propose to send thither, this Fall, a number of settlers—as many as will go and labor a certain time, to be paid in land, and found in provisions for the time they labor—perhaps one year. Mr. J. Breckinridge, Adair, and Fowler, have separately told me that it was the strong desire of the Administration that American settlers should go into that quarter, and that I could not do a thing more grateful to the Government. *I have some other views, which are personal, merely, and which I shall have no objection to state to you personally, but which I do not deem it necessary to publish. If these projects could anyway affect the interests of the United States, it would be beneficially; yet, I acknowledge that no public considerations have led me to this speculation, but merely the interest and comfort of myself and my friends.*"

And, finally, there is the following marginal admonition:

"It may be an unnecessary caution, but I never write for publication."

Thus you see, sir, that the design of separating the States is denied in terms explicit, as Mr. Smith's letter had desired; but, with how much regard to truth, this volume of evidence at Richmond has sufficiently proved. The purchase of the Washita lands is announced to have been completed. Thus far, the answer is precisely such as the letter seemed to ask; but all the rest is darkness and oblivion. The caution against publication was itself not naturally suited to inspire confidence. It seems to say, You may show this letter, but you must not publish it. The other allusions are so obscure—so unintelligible—that Mr. Smith has found it necessary to make them clear by explanatory notes. There is a reference to former conversations on the subject of a separation of the States, in which Mr. Smith is *reminded that he concurred* with the sentiment which Mr. Burr had expressed. Mr. Smith's note intimates that this refers to opinions about the separation of the Union in some fifty or a hundred years. But, if Burr's speculations in public companies postponed to so distant a date the event, which he was projecting, to Eaton, to the Morgans, to Blannerhasset, to McFarland, and Glover, he had been urging the propriety of their accomplishment at a much earlier day. And, from the testimony of Col. James Taylor, it would seem that the concurrence of sentiment for which Mr. Burr refers to the consciousness of Mr. Smith, extended no less to the practical projects than to the speculative opinions of Burr—to the separation of the States within five or two years rather than to the disemberment of the next century. The mode, says Mr. Burr, for promoting such a measure would be by operating on the minds of the people, and demonstrating it to be their interest. Now this was the very mode in which Mr. Burr and Blannerhasset under him had been attempting to promote the measure. Burr had been so operating at Cincinnati the year before this. And William McFarland at least had persuaded, that Cincinnati was to be the Capital of the Western empire. He had been so operating all the way at least from Pittsburg, in August, and until he left Cincinnati in September, only six weeks before these letters were written. The *Querist* was one of these instruments of the *mode* for operating, upon the minds of the people. And when the *Querist* first appeared, Mr. Smith had expressed his approbation of its contents. Is not this the sort of concurrence to which Mr. Burr alludes, rather than that of speculating upon the destinies of a future age? The rest of the letter is equally obscure. Mr. Burr's abandonment of a project for settling in Tennessee requires the explanation of a note from Mr. Smith; and that note is conjectural. Mr. Burr has some other views, merely personal, which he can only communicate *personally*. If they could affect the interests of the United States, it would only be beneficially; but they were prompted by no public considerations, but merely for the interest and comfort of himself and his friends.

Mr. President, I ask again the attention of the Senate to this remarkable sentence. Did Mr. Smith, on receiving the letter, understand this sentence, or did he not? If he did, where is the whole defence which he has now set up? If he did not, was this paragraph calculated to inspire his confidence? Was it calculated to remove suspicions? Projects which could only be *personally* disclosed! Projects which might affect the interests of the United States! Projects prompted by *no public* considerations! but merely by personal interest for himself and *his friends!* And was this to remove suspicion from the mind of a Senator of the United States? Was this an answer to calm anxieties and restore confidence? Is not the very language of it suspicious? Equivocal? Ambiguous? I ask every member of this Senate to put the question to himself. Had you been at that time in the midst of the scene of Burr's operations, and had you received such an answer

to a letter of solicitous inquiry, would it not have increased instead of allaying your alarm? Would you not have seen in this paragraph a concealment suspicious in itself—darkened still further by expressions of dangerous import and of doubtful legality? Strange indeed must be the texture of that mind to which this answer could restore unqualified confidence in the writer!

But, sir, if Mr. Smith had seen nothing in this letter to startle confidence, instead of composing it, was there nothing in the course of public events at that time, which might and should have aroused him to more than suspicion? Mr. Burr's letter was dated on the 26th of October; within ten days from that time, that is, on the 5th of November following, the District Attorney of the United States in Kentucky filed a complaint against Mr. Burr, for a violation of the laws of the United States in setting on foot an expedition against Mexico, which complaint I beg leave to read—

"J. H. Daviess, attorney for the said United States, in and for said district, upon his corporal oath, doth depose and say, that the deponent is informed, and doth verily believe, that a certain Aaron Burr, Esq. late Vice President of the United States, for several said months past hath been and is now engaged in preparing and setting on foot, and in providing and preparing the means for a military expedition and enterprise, within this district, for the purpose of descending the Ohio and Mississippi therewith, and making war upon the subjects of the King of Spain, who are now in a state of peace with the people of the United States, to wit: on the province of Mexico, on the westwardly side of Louisiana, which appertain and belong to the King of Spain, an European prince, with whom the United States are at peace.

"And said deponent further saith, that he is informed, and fully believes, that the above charge can, and will be fully substantiated by evidence, provided this honorable court will grant compulsory process to bring in witnesses to testify thereto.

"And this deponent further saith, that he is informed, and verily believes that the agents, and emissaries of the said Burr, have purchased up, and are continuing to purchase large stores of provisions as if for an army, while the said Burr seems to conceal in great mystery, from the people at large, his purposes, and projects: and while the minds of the good people of this district seem agitated with the current rumor, that a military expedition against some neighboring Power is preparing by said Aaron Burr.

"Wherefore, said attorney, on behalf of said United States, prays that due process issue to compel the personal appearance of the said Aaron Burr in this court, and also of such witnesses as may be necessary in behalf of the said United States; and that this honorable court will duly recognize the said Aaron Burr, to answer such charges as may be preferred against him in the premises. And in the mean time, that he desist and refrain from all further preparation and proceeding in the said armament, within the said United States, or the territories, or dependencies thereof."

It will be remembered that on this complaint a grand jury was summoned, and on the 8th of November discharged, because Davis Floyd, whom the attorney deemed a material witness, and whom we now know to have been one of Mr. Burr's principal associates, was absent. We all know what the effect of this transaction was here. Certainly not of inspiring *confidence* in those who were *ignorant* of Mr. Burr's real designs.

No, sir! The confidence, which this abortive attempt to bring Mr. Burr to justice inspired, was in himself and associates. He wrote immediately to Blannerhasset, not to apprehend any danger from this prosecution, (which his friends then and so long after called a persecution,) but *delay* in the settlement of the lands; and one fortnight after—that is, on the twenty-third day of November—we see him again at Cincinnati, making the promised personal and confidential communication to Mr. Smith, which he had not dared in the letter of 26th October to commit to paper—and no wonder; for it is a complete and unquestionable acknowledgment of the identical crime, for which Mr. Burr had been summoned into court at Frankfort, not twenty days before, and discharged merely from the failure of a witness to attend. But it is not merely a confession of *that* guilt, it imports much more; and the very terms used by Mr. Smith, relating it, in his affidavit of 6th of June, 1807, show that he understood it as importing more. Mr. Burr tells Mr. Smith, that his design "is not dishonorable, or *inimical* to this Government;" he "repeated that his object was *not hostile to the people of the United States or dishonorable to himself*," and that he would be "the *best neighbor this country ever had*." Whether the design was honorable or dishonorable, Mr. Smith should have judged for himself. That it was not inimical to this Government, there was little reason for him to believe, when coupled with those boiling resentments, which overflowed from the lips of Mr. Burr in the very act of making this acknowledgment. "In this Gov-'ernment he had been persecuted, shamefully per-'secuted, and he was sorry to say, that in it all pri-'vate confidence between man and man, seemed 'to be nearly destroyed." And in this state of temper, Mr. Burr "ventured to tell Mr. Smith 'that if there should be war between the United 'States and Spain, he *Burr*, should *head a corps* '*of volunteers, and be the first to march in the* '*Mexican provinces;* if peace should be preserved, 'which he did not expect, he should settle his 'Washita lands, and make society as pleasant as 'possible."

And this is the communication, which *added strength* to Mr. Smith's confidence in Mr. Burr! This is the communication upon which Mr. Smith engaged his two sons to go as Burr's associates!

The attack upon Mexico was to be *in case* war should take place between Spain and the United States. But is it possible, sir, that a man of Mr Smith's understanding should *at that time*, and under these circumstances, have given an instant of credit to that shallow pretence? If Mr Swartwout, one of Burr's acknowledged associates was ashamed of pretending to rely on this tale of contingent war, and frankly told the grand jury at Richmond that they were to attack Mexico, to

be sure, in case of a war with Spain; but if there had been *no* war *he* was ready to forget the law of the United States against such expeditions. If Commodore Truxtun, a private citizen, smarting under the injuries which he conceived he had suffered from the Administration, even in July, while the project was but in prospect, and not in actual execution, made his first and emphatical question, whether the Government of the United States was acquainted with it, and on being informed that that they were not, instantly refused to have any concern with it; let me ask, whether in the last days of November, while Burr was persevering in his preparations, after having been brought before a judicial court upon the very charge, and dismissed solely because a witness was absent, *a Senator of the United States*, receiving this communication from Burr himself, could possibly be the dupe of this pretence? Whether his first question ought not to have been that of Commodore Truxtun: Is the Executive of the United States informed of your designs? Is it possible, sir, that this disclosure of the intended Mexican invasion, could confirm the confidence of Mr. Smith, when it was the very thing for which the district attorney not three weeks before had entered the complaint against Mr. Burr, before the court of the United States competent to try that offence? Is it possible that Mr. Burr's confession of his guilt should have been the confirmation of Mr. Smith's confidence? Yes, sir; so far as relates to the misdemeanor—to Mr. Smith's participation in the project for invading Mexico—his own affidavit on the 6th of January, 1807, is evidence, which, in my mind, nothing can control. His engagement of his two sons to Mr. Burr, admits neither of denial nor of jurisdiction.

About ten days after this, on the second and third of December, Mr. Smith goes to Cynthiana, Frankfort, and Lexington, to purchase provisions, and to sell bills of exchange. Here he accidentally sees again Mr. Burr. He he finds that Mr. Burr is for the second time charged, and now before a grand jury, with that very offence of preparing an expedition against Mexico, which in his confidential communication to Mr. Smith he had explicitly avowed. And Mr. Smith, by the testimony of three of his own witnesses, hurries away from the scene to avoid being subpœnaed as a witness, declaring that he knows nothing on the subject that could either criminate or justify Mr. Burr. The first of these witnesses is Kelly, Mr. Smith's confidential agent and storekeeper at Cynthiana; of whose character as a man of uprightness and veracity, the most respectable attestations are produced. After stating the motive of Mr. Smith's going to Cynthiana, and thence to Lexington, Kelly's deposition, produced there by Mr. Smith himself, proceeds thus:

"He returned and informed me that on his arrival at Lexington he understood that the principal men, with whom he wished to transact business, were at Frankfort; that he was also informed that a prosecution, the second time, was commenced against Colonel Burr, and he (Smith) was told, that if it was known he was in the State, he would be subpœnaed as a witness; that he told his informers he would not put them to the trouble to summon him, if he had a fresh horse he would go on there immediately; finding he could not see the men he wished to see, he started for Frankfort; that on his arrival there he inquired for Major Morrison, I think he said, in two or three public houses, but could not find him; that he was informed the investigation into Burr's conduct before the grand jury was delayed for want of General Adair, who was said to be a principal witness against him, and that in all probability proceedings would be staid for several days, and as he (Smith) could not be detained so long from his business, particularly as he *knew nothing that would either criminate or exculpate Colonel Burr*; that if his testimony could be of any benefit either way he would have staid with pleasure, but *as he was entirely ignorant of any of Burr's political views*, he conceived to stay there for no purpose would be doing injustice to his private as well as public concerns, and therefore, as he was not summoned, he started away early next morning."

Mr. Jordan's deposition, after relating Mr. Smith's applications to him respecting the bills of exchange, says—

"The conversation then turned on the pending trial of Colonel Burr; and I mentioned that I had been called on as a witness; and observed that Burr had also been at your house; and was it known that you were in this place, that you would also be called on. You said you was willing; *that you knew nothing of the business*; but, as you could not get your business accomplished here, that if you had a fresh horse you would go to see Major Morrison, and save them any trouble of subpœnaing you."

The deposition of Joseph Taylor is to the same effect; that Mr. Smith denied all knowledge of anything which could operate either for or against Mr. Burr.

Now, sir, how was the fact? Was Mr. Smith thus ignorant? It seems to me that he was not. The disclosure which on the 23d of November, he himself has sworn Mr. Burr had made to him in confidence, was knowledge of the most decisive character on the question before the grand jury; was knowledge, which, had Mr. Smith been even a private citizen, he was bound in duty to have gone and related to them. Admitting that even Mr. Smith could have believed that Burr intended the Mexican invasion, only in case a war should break out; still the preparations he was making were unlawful; still he was guilty of the very charge made against him then before the grand jury; and had confidentially avowed the object to Mr. Smith. Had Mr Smith gone before that grand jury, and told them, from the lips of Mr. Burr, what the affidavit of 6th January, 1807, declares upon oath; that grand jury, instead of dismissing Mr. Burr as they did, with commendation and applause, would have been bound, with the oath of God upon their consciences, to find a bill against him. The confession of Mr. Burr unquestionably brought him within the operation of the statute upon which he was prosecuted, and I cannot but attribute to Mr. Smith's studious avoidance of attending upon that grand jury, all the unfortunate, and I may say calamitous consequences which have befallen this nation, from the failure

of bringing Burr to justice at that time. Had he then been indicted, on Mr. Smith's testimony alone, he must have been convicted. The alarms, the agitations, the extraordinary and irregular stretches of power at New Orleans, which have distressed every free and patriotic heart, would have been needless; would have been prevented. The progress of that pernicious enterprise would have been arrested there. The whole judicial authority of the United States would have been laid prostrate before the wiles of conspiracy. There would have been no trial; no occasion for a trial at Richmond; treason would have been nipped in the bud, and Mr. Smith himself would at this day have been here, in the full enjoyment of his reputation, with his consciousness of having rendered a service of the highest importance to his country. But, sir, unfortunately for him; unfortunately for us; unfortunately for his country, he had engaged his two sons to Mr. Burr. He could not testify against Burr without condemning himself, and he shrunk from the presence of the grand jury.

Ten days after this the President's proclamation and Governor Tiffin's orders for the militia to be called out, both arrived on the same day, the 13th of December, at Cincinnati; and from that time Mr. Smith's exertions to carry into effect the orders both of the General and State Government were characterized with great and extraordinary zeal. But even then he writes to the Secretary at War a narrative not exactly conformable to that afterwards contained in the answer to the committee; in the answer Mr. Smith declares repeatedly that all his *doubts* and *suspicions* about Mr. Burr, had been removed by his openhearted candid letter of 26th October. In the letter to the Secretary of War, he speaks of himself as harboring so strong suspicions on Burr's subsequent visit to Cincinnati in November, as then to have *asked* him *pointedly* if any object he had in view justified the suspicions that prevailed about him, and that from Mr. Burr's apparent candor in answering this question he (Smith) entertained no doubt of him. Now this apparent candor, was an acknowledgment of the very same undertaking which the President's proclamation called upon the people to suppress. The proclamation had no reference to the part of Burr's project which aimed at the dismemberment of the Union—it was the intended invasion of Mexico, which it extended the arm of the nation to restrain—the very expedition upon which Mr. S. had engaged his two sons.

How was it possible that this disclosure of an unlawful design could have restored the confidence and received the countenance of Mr. Smith? It is this, with the circumstances attending it, and which I have noticed, that render Mr. Smith himself the most material of all the witnesses against him. The letter, I have shown, contained little to remove, and much—very much—to excite suspicion. The avowal of the intended march to Mexico was an avowal of guilt. Mr. Smith does not pretend that Mr. Burr hinted to him that the design was approved by the Government. The bitterness with which he spoke of the Government was surely, of itself, an indication to the contrary. Did not Mr. Smith know that this was an unlawful enterprise? Could he have been ignorant of this before? The first prosecution in Kentucky must surely have given him sufficient notice of that. Before he engaged his two sons, ought he not to have inquired how the Washita settlement was to be made?—how the same preparations could be transformed, at pleasure, from purposes of war to purposes of agriculture?—how the same men and the same things could possibly be applied to the invasion of one country and the settlement of another?—by what magic they were to beat their swords into ploughshares, and their spears into pruning-hooks? Even Peter Taylor—the stupid Peter Taylor, as Mr. Smith has pronounced and his counsel endeavored to prove him; even Peter Taylor—when Blannerhasset attempted to engage *him* for the Washita settlement, inquired what kind of *seed* they should carry with them; nor would he be satisfied with Blannerhasset's evasions of this question, but urged him with it until he forced out the whole project—the Mexican empire—the royal diadem of Mr. Burr—and the dismemberment of the American Union! Peter Taylor was indeed, as Mr. Smith says, a gardener. He certainly cannot, in point of understanding, be compared with Mr. Smith; yet, even he could bethink himself of the articles which would be suitable for his agency in a settlement of lands; even he could discern the difference between gardenseeds and gunpowder. And yet, Mr. Smith, a Senator of the United States—a settler in a new country—a confidential and intimate friend of Mr. Burr—engaged his two sons for an amphibious expedition of settlement or war, without putting a single question to ascertain how these schemes of contrariety could be reconciled together—without one single inquiry which could lead to a colorable pretence of right for the war-like part of the plan—preparations for war—levying of troops! Was a Senator of the United States to wait for the President's proclamation to learn the unlawfulness or the danger to the liberties of the country of such enterprises, undertaken without public authority? Was he yet to learn that the power of making war and of raising soldiers has been deemed by the people of this nation of such magnitude and danger that they would not entrust them to the Executive authority, but have expressly and cautiously reserved them exclusively to the representatives of the nation assembled in Congress? And, until the declaration of war by Congress, he surely knew that every preparation of expeditions to invade the territories of a neighboring Sovereign, was, even in the incipient stage of beginning and setting on foot, in direct violation of the laws of the land. The pretence that it was to be pursued only in case war should take place, did not make it at all more lawful, but made it, if anything, more dangerous. Suppose, sir, that war had been declared, was it for Aaron Burr to say who should *head* corps of volunteers, or who should be *the first* to march into the Mexican provinces? Entertaining the opinion that I do and then did of Mr. Burr, I should have considered it as one of the greatest misfor-

tunes which could have befallen the United States, even if they were at war, to have had such a man as him at the head of their armies. Nor can I consider it but as highly unbecoming in a member of the National Legislature to have given him countenance in this project of forcing himself upon the Government of the Union as the General of an army for the invasion of Mexico. It was encouraging and aiding a violation of the Constitution in its vital principles; it was setting an example more to be dreaded by the people of the Union than the most formidable foreign war. And of all this Mr. Smith himself is the self-accusing witness. All the other witnesses are but in confirmation and aggravation of these decisive facts. Some of them indicate circumstances of very strong suspicions that Mr. Smith's participation was much earlier and much deeper. Others strikingly demonstrate that he was acting under a consciousness of unlawful engagements; and all concur in producing upon my mind the conviction that this resolution ought to pass.

Mr. President, I have discharged a painful obligation. No discussion has ever devolved upon me, as a member of this body, in which I have taken a part with more reluctance than in this. Until these transactions occurred, there was perhaps not another member of the Senate in whose integrity I more confided: and but for this, there is none whom I should more readily take by the hand as a friend and a brother. I trust, sir, that I feel as I ought for his personal situation on this occasion, as well as for the interests and the feelings of his family. I am sensible, and have never lost sight of what is due from me to him as members of this Assembly. But there is also a duty to the character and reputation of this body; a duty to the State whose representation on this floor has been in part entrusted to him; and a duty to the whole nation whose public servants we are. In the discharge of these duties, I have felt myself compelled to submit these observations to the Senate, and with these I shall conclude.

When Mr. ADAMS had concluded, on motion of Mr. GILES, the further consideration of the subject was postponed until to-morrow.

The Senate resumed, as in Committee of the Whole, the consideration of the amendments reported by the select committee to the bill, entitled "An act concerning courts martial and courts of inquiry;" and, after progress, adjourned.

SATURDAY, April 9.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to authorize the transportation of certain documents, by mail, free of postage," in which they request the concurrence of the Senate.

CASE OF JOHN SMITH.

Agreeably to the order of the day, the Senate took up the resolution reported by the committee, appointed on the 7th of November last, to consider the subject; to wit:

Resolved, That John Smith, a Senator from the State of Ohio, by his participation in the conspiracy of Aaron Burr, against the peace, union, and liberties, of the people of the United States, has been guilty of conduct incompatible with his duty and station as a Senator of the United States; and that he be therefor, and hereby is, expelled from the Senate of the United States

Mr. HILLHOUSE.—The cause before the Senate has been so fully heard, and so ably discussed, that it was my intention to have given a silent vote, had not the gentleman from Massachusetts (Mr. ADAMS) declared in so pointed a manner that even voting on the resolution would sanction the report of the committee which accompanied it; a report containing principles which I can never sanction by my vote; principles which go to discredit all our criminal tribunals, and those rules of proceeding and of evidence which govern the decisions of courts; rules which alone can shield innocence, and protect an accused individual against a Governmental prosecution, or the overwhelming power of a formidable combination of individuals, determined on his destruction—principles which would plant a dagger in the bosom of civil liberty.

Of the many erroneous principles contained in that report, there is but one which I shall think it necessary particularly to notice. The question (says the report) upon the trial "of a criminal 'cause, before the courts of common law, is not 'between guilt and innocence, but between guilt 'and the possibility of innocence." This is a principle which I can never sanction, nor in the smallest degree countenance by my vote. In every country where civil liberty and individual rights are regarded, the common law rule is, that the trial is between innocence and guilt; and that every person is to be deemed innocent until his guilt is proved; a rule which, so long as we shall preserve our liberties, cannot be abandoned. Once admit that the person accused is to be presumed guilty, and to be put to prove the possibility of his innocence, and the same circumstances that would otherwise go to establish innocence, would be converted into proof of guilt. In the present case, admit the presumption of innocence, and many parts of the conversations and conduct of the member accused, which are now relied on as proof of his guilt, may be accounted for, as being exactly what an honest, unsuspecting man would have said and done; but upon the supposition that he was engaged in Aaron Burr's conspiracy, many presumptions of his guilt may be drawn from them. This has been the ground assumed by the gentleman from Massachusetts, and on this he has built his argument. In this way the accused member, by doing what was commendable, and what was his duty as a good citizen to do, has furnished evidence of his guilt.

As to the two precedents referred to, and which appear on the journals of the Senate, they are misapprehended, and the facts entirely misstated in the report of the committee. In one case I was an actor in the scene, being then a Senator, and have a perfect recollection of the facts, and know the statement to be wholly erroneous. Referring to the case of William Blount, the report says:

"In all these points the committee perceive the admission of a species of evidence, which in courts of criminal jurisdiction would be excluded; and in the resolution of expulsion, the Senate declared the person inculpated, *guilty of a high misdemeanor*, although no presentment or indictment had been found against him, and no prosecution at law was ever commenced upon the case."

By the journals of the Senate, it appears that—

"On motion, Mr. Martin and Mr. Cocke of the Senate, being sworn, severally testified, on the inspection of the letter said to be written by Mr. Blount, that it was his handwriting, they being acquainted therewith, and having seen him write."

This entry on the Journal corresponds with my recollection of the fact. This was legal testimony, and the only testimony admitted on the trial. [Here Mr. ADAMS called for the reading of that part of the Journal which states that Mr. Blount was requested by the President of the Senate to declare whether or not he was the author of the letter. The Journal was read, and was as follows, viz:

"The President requested of Mr. Blount to declare, whether or not he was the author of the letter, a copy of which was communicated with the Message of the President of the United States of the 3d instant. Mr. Blount declined an answer."

Mr. A. said that this was evidence not admissible in a court of law.]

Mr. HILLHOUSE proceeded.—I sat in judgment on that case, and know that Mr. Blount's declining to answer was not considered as evidence. The question was asked, because Mr. Blount might have no objection to answer; he might have supposed the contents harmless, or have been able to give a satisfactory explanation thereof—he being a member of their own body—it was no more than civil to give him this opportunity before they proceeded to prove the letter upon him. It was impossible the Senate should have made the inquiry for the purpose of drawing from Mr. Blount an accusation of himself; or that they should be capable of converting his refusal to answer into proof of guilt, in direct violation of that fundamental principle of civil liberty, that no man shall be compelled to accuse himself. The rule goes so far as to protect even a witness from being obliged to answer any question which may go to criminate himself. What is said respecting the comparison of his handwriting, appears by the journals not to have taken place in the Senate, or on the trial, but before the committee who made the report, and the preparatory arrangements for the trial.

In regard to the other precedent, the report of the committee goes on to say:

"The event (the expulsion of William Blount) occurred in July, 1797. About fifteen months before that time, upon an application from the Legislature of Kentucky, requesting an investigation by the Senate of a charge against one of the members from that State of perjury, which had been made in certain newspaper publications, but for which no prosecution had been commenced, the Senate did adopt, by a majority of sixteen votes to eight, the report of a committee, purporting that the Senate had no jurisdiction to try the charge, and that the memorial of the Kentucky Legislature should be dismissed. There were, indeed, very sufficient reasons, of a different kind, assigned in the same report, for not pursuing the investigation in that particular case any further; and your committee believe, that in the reasoning of that, some principles were assumed, and some inferences drawn, which were altogether unnecessary for the determination of that case, which were adopted without a full consideration of all their consequences, and the inaccuracy of which was clearly proved by the departure from them in the instance which was so soon afterwards to take place. It was the first time that a question of expulsion had ever been agitated in Congress, since the adoption of the Constitution. And the subject, being thus entirely new, was considered perhaps too much with reference to the particular circumstances of the moment, and not enough upon the numerous contingencies to which the general question might apply. Your committee state this opinion with some confidence, because of the sixteen Senators, who, in March, 1796, voted for the report dismissing the memorial of the Kentucky Legislature; eleven, on the subsequent occasion, in July, 1797, voted also for the report, which concluded with a resolution for the expulsion of Mr. Blount. The other five were no longer present in the Senate. Yet if the principles advanced in the first report had been assumed as the ground of proceeding at the latter period, the Senate would have been as impotent of jurisdiction upon the offence of Mr. Blount, as they had supposed themselves upon the allegations against Mr. Marshall."

Mr. President, I was not then of the Senate, but feel for the character of its members, and regret extremely, that, in drawing this report, it should have been deemed necessary to mention the then Senate, which was composed of many of the most respectable characters of our country, in a manner that seems reproachful, and to imply that the majority were governed in their votes by political or party considerations. Could it be necessary to state, in such a pointed manner, that, of the sixteen Senators who, fifteen months before, voted for the dismissal of the Kentucky memorial, eleven voted for the expulsion of Mr. Blount, the other five being no longer present, both cases involving the same principle? Was it necessary to insinuate that that subject was considered, perhaps too much, with reference to the particular circumstances of the moment? It is still more unfortunate that such reproachful insinuations should have been made, seeing, upon a careful examination of the report in the case of Mr. Marshall, it is manifest that its principles are entirely misapprehended. That part of the report reads thus:

"Mr. Marshall is solicitous that a full investigation of the subject should take place in the Senate, and urges the principle, that, 'consent takes away error,' as applying on this occasion to give the Senate jurisdiction. But, as no person appears to prosecute, and there is no evidence adduced to the Senate, nor even a specific charge, the committee think any further inquiry by the Senate would be improper. If there were no objections of this sort, the committee would still be of opinion that the memorial could not be sustained. They think that, in a case of this kind, no person can be held to answer for an infamous crime, unless on a present-

ment or indictment of a grand jury; and that, in all such prosecutions, the accused ought to be tried by an impartial jury of the State and district wherein the crime shall have been committed. If, in the present case, the party has been guilty in the manner suggested, no reason has been alleged by the memorialist why he has not long since been tried in the State and district where he committed the offence. Until he is legally convicted, the principles of the Constitution and of the common law, concur in presuming that he is innocent; and the committee are compelled by a sense of justice to declare, that, in their opinion, this presumption in favor of Mr. Marshall, is not diminished by recriminating publications which manifest strong resentment against him. And they are also of opinion, that, as the Constitution does not give jurisdiction to the Senate, the consent of the party cannot give it; and that, therefore, the said memorial ought to be dismissed."

Mr. President, the principle laid down in this report, as I then, and now understand it, is, that the Constitution not having given to the Senate criminal jurisdiction, the consent of the party could not give it. That it could not refer to the power of expulsion is manifest, because the jurisdiction of the Senate in cases of expulsion, is, by the Constitution, express and unlimited; provided, only, that there be the concurrence of two-thirds. When the report says "the Constitution does not give jurisdiction to the Senate, the consent of the party cannot give it," it must be understood to be an answer to Mr. Marshall's application for a trial to vindicate his character. The Senate not finding any occasion to pursue the inquiry for the purpose of exercising their censorial power of expulsion, assumed the principle, and in my opinion correctly, that, to establish the principle of innocence or guilt for any other purpose, they had no jurisdiction; the consent of the party could not give jurisdiction. To assume such jurisdiction, would be to convert the Senate into a criminal tribunal, which, by the Constitution, is reserved to the common law courts, and an impartial jury of the State and district. The reason for distinguishing the power of expulsion from the exercise of criminal jurisdiction, will be sufficiently manifest from a reference to the memorial and report, from which it will further appear, that the charge was grounded on what had taken place in the Court of Appeals of Kentucky, eighteen months previous to Mr. Marshall's having been appointed a Senator, and had been the subject of newspaper discussion, and was fully known to the Legislature when the appointment was made. In the present case, suppose the Senate had been satisfied that no inquiry was necessary for the purpose of exercising their censorial power of expulsion, and Mr. Smith had requested the Senate to institute an inquiry for the purpose of giving him an opportunity of vindicating his innocence, would not the Senate have given him the same answer as was given in the case of Mr. Marshall? "No person can be held to answer for an infamous crime, unless on a presentment, or indictment of a grand jury," &c.; "that as the Constitution does not give jurisdiction to the Senate, the consent of the party cannot give it?" That the Senate have no power, by the Constitution to transform themselves into a court of criminal juriediction to try any offence whatever, but a right, only, to inquire into such facts as may be necessary to enable them to exercise the power of expulsion. That the Constitutional authority of the Senate to expel a member, is not the jurisdiction of a court instituted for the trial and punishment of crimes, but a political power, to be exercised only when necessary for preserving the purity of this branch of the Legislature, is evident, from the consideration that it does not exempt a person from the liability to be tried and punished by the criminal tribunals of the country. The use that is attempted to be made of this precedent, shows in a strong point of light the impropriety and impolicy of attempting to settle abstract questions, or to detail reasons, not necessary for coming to a proper result in the case before us, being liable to be misunderstood or misstated.

I do, most fully, agree with the gentleman from Massachusetts, that the Senate, for the purpose of exercising their censorial power of expulsion, have cognisance of the case before us. That, for that purpose, they have cognisance of all crimes and offences, and are not bound to wait for the proceedings of the courts of common law. I further admit, that the same degree of evidence is not necessary to justify an expulsion of a member, as to convict him before a court and jury. For example, on a charge of treason, two witnesses are necessary to a conviction. On such a charge, I should not hesitate to expel a member on the testimony of a single witness of irreproachable character. What I insist on, is, that the evidence admitted must be legal evidence, and such as would be admissible in a court of law; not *ex parte* depositions, hearsay evidence, or surmises founded on mere conjecture or suspicion.

Were I, in deciding this case, to be governed by political or party considerations, I should incline to vote in favor of the resolution on your table. But, when we reflect, that agreeing to the resolution is to disrobe a Senator of his honor, to doom a fellow citizen, an amiable family, and an innocent posterity, to perpetual infamy and disgrace, party and political considerations ought not, cannot, influence the decision. Impartial justice and the testimony, alone, must govern, and I flatter myself, will govern, every member of this Senate in the vote he is about to give.

Elias Glover, having volunteered in giving his deposition, when no accusation existed, was to be considered rather an accuser than a witness. An *ex parte* deposition, taken under such circumstances, could not by me be considered as evidence on a question of expulsion, had not the accused member and his counsel agreed to its admission, by which I was bound to consider it as evidence. And in my mind it is so material, that if the force of it had been destroyed by counter testimony, I must have voted for the resolution before us. But I have listened with pleasure, for it always gives me pleasure when a person accused can prove his innoceuce, to the evidence adduced, which has completely done away the force of Glover's deposition. The gentleman

from Massachusetts admits, and every member who has spoken seems to agree, that no reliance can be placed upon it. I shall therefore lay that out of the case; as also the other evidence attempting a direct proof of a participation in Aaron Burr's conspiracy, as in this also I fully agree with the gentleman from Massachusetts that it amounts to very little. It is the conduct and confessions of Mr. Smith by which his guilt is endeavored to be established; and when such talents and eloquence as are possessed by the gentleman from Massachusetts are brought to bear upon, and are urged with so much energy and force against an individual accused of being concerned in plots and conspiracies against the Government of his country, charges peculiarly calculated to excite jealousy and suspicion, innocence itself could hardly expect to escape. After hearing his able and eloquent argument, I was much gratified by the motion of the gentleman from Virginia, (Mr. GILES,) to postpone. I wished for one night to consider the subject; I was not then prepared to make a reply.

The gentleman from Massachusetts has relied on the conversations, confessions, and conduct of Mr. Smith to prove his guilt, but he does not take the whole conversation and confession together; and it is a rule of law, always admitted, and never to be departed from, that when the confession of the party is taken, the whole must be taken together; and not to make out proof of guilt, by selecting different detached parts, leaving out other parts that go to explain what otherwise might appear criminal. A strict adherence to this rule will leave little of evidence, or even ground of suspicion of guilt in this case. If all Mr. Smith's conversations and confessions are taken together, there can remain little doubt of his innocence.

The first circumstance in Mr. Smith's conduct which is laid hold on, and on which the gentleman from Massachusetts has built his argument to establish his guilt, is, that Mr. Smith has confessed that in September, 1806, he gave Aaron Burr a hospitable reception under his roof, for four or five days; that he afterwards saw him again at Cincinnati and in Kentucky. What was there suspicious in all this? Who was Aaron Burr? And what was the situation of Mr. Smith in relation to him, that extending to him the rights of hospitality should excite suspicion, and fix the imputation of crime? Aaron Burr was a man who had stood high in the confidence of the people of the United States—a man who had been associated with the present Chief Magistrate, and had received an equal number of the votes of the Electors for President—a man who had been by the voice of his country placed in the second office in the nation—a man who for four years filled the Chair you now occupy, and presided over this Senate with impartiality and dignity; and in a manner to command universal approbation. So great was the ascendancy which he had acquired in this body, that towards the close of his term of service a bill was passed granting to him for life the privilege of sending and receiving letters and packets through the mail free of postage, a privilege which had never been extended to any but a President of the United States and Mrs. Washington. So great was the confidence of a majority of the Senate in Aaron Burr, as to produce an unusual zeal, no doubt a laudable zeal, for passing the bill. It was pressed in an unusual manner; and we were called to a decision when he was himself in the Chair; he who could almost look down opposition. Under such circumstances it was painful to oppose the bill; and nothing but a strong sense of duty could have impelled any one to make opposition. The yeas and nays on the Journal* will show how great a portion of the Senate, of which number was Mr. Smith, had so high a confidence in Mr. Burr. At that time I had no more suspicion than the majority of Colonel Burr's having any treasonable designs; though in opposition to the bill, I did state it as a possible case, that a Vice-President, ambitious of rising to the first office in the nation, and meeting with disappointment, might become disaffected, and engage in treasonable plots to overturn the Government, and avail himself of his privilege and the mail to circulate his treason into every corner of the Union. The bill was arrested in the House of Representatives.

The Senate also adopted the following:

"*Resolved, unanimously*, That the thanks of the Senate be presented to Aaron Burr, in testimony of the impartiality, dignity, and ability with which he has presided over their deliberations; and of their entire approbation of his conduct, in the discharge of the arduous and important duties assigned him as President of the Senate."

I was happy on this occasion to unite in what I considered a just tribute of applause for his conduct as President of the Senate.

This was the close of Aaron Burr's political career; this was the last public office he sustained in the nation, and from that time, till Mr. S. received the pencilled note asking for the hospitality of his house for a few days, it was not publicly known that he had done anything to take off the impression which his official conduct as Vice President, and those public acts of the Senate, had made. Under these circumstances, and considering the intimacy and friendship which had been contracted while they were associated in the same political body, the Senate of the United States, what could Mr. Smith do? What did his early impressions, all the habits of his life, and the honorable feelings and sentiments of a gentleman imperiously demand of him to do? The answer will be anticipated; he could do no otherwise than extend to him the rights of hospitality, receive and treat him as a gentleman.

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*YEAS—Messrs. Adams, Anderson, Bradley, Breckenridge, Brown, Cocke, Condit, Dayton, Gaillard, Jackson, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, White, and Wright—18.

NAYS—Messrs. Baldwin, Ellery, Franklin, Hillhouse, Howland, Logan, Maclay, Olcott, Pickering, Plumer, Stone, Sumter, and Worthington—13.

Had he been an entire stranger he could not have done otherwise, without being considered as having disgraced his native State, for he was born in Virginia, so famed for hospitality, not only to friends, but to strangers. Had Mr. S. done otherwise than he did, would he not have been disowned as unworthy to be called a Virginian? This act of hospitality and politeness is now considered as a crime, which is to fix indelible disgrace on Mr. S. and his family.

The next thing relied on is, that Mr. S. being informed of the projects and schemes of Mr. Burr concealed them. The gentleman from Massachusetts has told us that, if Mr. S. had come forward and testified before the grand jury of Kentucky, Burr would have been convicted, and his treasonable plot, which has done so much mischief, arrested. The disclosure which Mr. S. states to have been made to him, (and there is no proof on the subject but what comes from himself) is as follows—viz: Colonel Burr said to him, "Mr. 'Smith, my object in a few months will be dis-'closed; you will not find it dishonorable or ini-'mical to this Government. I feel superior to 'the mean artifices which are ascribed to me; cal-'umniators I do not notice, for as fast as you put one 'down, another will rise up. This much I will 'venture to tell you, if there should be war be-'tween the United States and Spain, I shall head 'a corps of volunteers, and be the first to march 'into the Mexican provinces; if peace should be 'preserved, which I do not expect, I shall settle 'my Washita lands, and make society as pleasant 'about me as possible." Now I ask, Mr. President, was there anything criminal, was there anything unlawful in all this? Was there anything to excite suspicion that Aaron Burr was engaged in a treasonable plot to sever the Union, or invade the territory of a friendly Power, in amity with the United States? Was it not, on the contrary, expressly said not to be dishonorable or inimicable to the Government? Was there any reason to suppose our Government would not, in the event of a war with Spain, accept the services of a corps of volunteers; when the policy seems to have been to rely on volunteers; and laws have frequently passed calling for, and authorizing the employment of such force? The evidence of Mr. S., had he appeared before the grand jury, instead of criminating Colonel Burr, must have operated in his favor; for to have headed a corps of volunteers under such circumstances would have been laudable. Has Mr. S. ever manifested any unwillingness to disclose what he knew of Burr's projects? On the contrary, has he not always done it freely, when there was a fit occasion, not only to his friends but the officers of Government?

But the gentleman from Massachusetts has compared the case of Mr. Smith with that of Commodore Truxtun, and stated that upon Burr's disclosing his plans to the latter, he was asked this all-important question—"Is the Executive of the United States privy to or concerned in the project?" This, says he, ought to have been the conduct of Mr. Smith; this would have been his conduct if he had been an innocent and an honest man. I little thought that Commodore Truxtun's deposition would have been resorted to in this case; a deposition which had not been read, a deposition not taken on the trial in the presence of Mr. Smith, nor in any way relating to his case. It must be an uncommon zeal that could have induced any one, possessing the legal knowledge of the gentleman from Massachusetts, to have resorted to that as evidence. But, sir, the answer to this is plain. Mr. Burr did not go as far with Mr. Smith as with Commodore Truxtun, otherwise Mr. Smith would probably have asked him the same question. But so much reliance having been had on Commodore Truxtun's deposition to prove Mr. Smith's guilt, on the score of omissions, as well as of what he has done, I must be permitted to read a part of that deposition: it is in these words, viz:

"About the beginning of the winter of 1805—6, Colonel Burr returned from the western country and came to Philadelphia, He frequently in conversation mentioned to me certain speculations in western lands. These conversations were uninteresting to me, and I did not pay much attention to them. Colonel Burr requested me to get the Navy of the United States out of my head, as he had something in view, both honorable and profitable, which he wished to propose to me. I considered this as nothing more than a desire to get me interested in land speculations. These conversations were frequently repeated; and some time in the month of July, 1806, Colonel Burr observed that he wished to see me unwedded from the Navy of the United States, and not to think any more of those men at Washington. He observed that he wished to see or to make me (I do not recollect which) admiral; for he contemplated an expedition into Mexico, in the event of a war with Spain, which he thought inevitable. He asked me if the Havana could not be easily taken in the event of a war. I told him that it would require the co-operation of a naval force. Mr. Burr observed, that might be obtained. He pursued the inquiry as to Carthagena and La Vera Cruz; what personal knowledge I had of those places, and what would be the best mode of attacking by sea and land. I gave my opinion very freely. Mr. Burr then asked me, if I would take the command of a naval expedition. I asked him, if the Executive of the United States was privy to or concerned in the project. He answered me emphatically, that they were not. I asked him that question because the Executive had been charged with a knowledge of Miranda's expedition. I told Colonel Burr, that I would have nothing to do with it; that Miranda's project had been intimated to me, and that I had declined any agency in those affairs. Mr. Burr observed that, in the event of a war, he intended to establish an independent Government in Mexico; that Wilkinson, the Army, and many officers of the Navy, would join. I replied, that I could not see how any of the officers of the United States could join. He said that Gen. Wilkinson had projected the expedition, and that he himself had matured it; that many greater men than Wilkinson, were concerned (or would join;) and thousands to the westward."

Mr. President, notwithstanding Colonel Burr had gone much farther in communicating his plans and projects to Commodore Truxtun than he had done to Mr. Smith, and notwithstanding those insinuations of weaning him from the Navy, forgetting those men at Washington, &c.—which

must have excited suspicion in the mind of a man of Commodore Truxtun's discernment, that Colonel Burr's project was unlawful, and not known to or approved by the Government—yet Commodore Truxtun, in whose honor and integrity I have the highest confidence, did not put the question, which the gentleman from Massachusetts relies on so much, and approves so highly, as evincing his integrity; and for not asking which Mr. Smith is to be suspected of a participation in guilt. It was when Colonel Burr asked Commodore Truxtun directly if he would take the command of a Naval expedition, and not till then, that he put the question. Had Colonel Burr asked Mr. Smith to engage supplies of provisions, gunboats, arms or men, for his expedition, then, and not till then could it be expected that Mr. Smith should have asked such a question; so far from saying anything to excite Mr. Smith's suspicions, Colonel Burr had expressly declared his object was not dishonorable or inimical to this Government. That Commodore Truxtun was dissatisfied with the Administration appears by his answer to a question of Mr. McRae in the same deposition, viz: "Were the remarks which he made on 'your relation to the Navy, calculated to fill your 'bosom with resentment against the Government? 'A. My bosom was already full enough, but certainly Colonel Burr spoke in concert with my 'feelings."

General Eaton's deposition has been introduced under like circumstances, and for the same purpose as that of Commodore Truxtun. He testifies that:

"During the winter of 1805–6, I cannot be positive as to the distinct point of time, yet during that winter, at the City of Washington, Colonel Burr signified that he was organizing a secret expedition, to be moved against the Spanish provinces on the southwestern frontiers of the United States, I understood; under the authority of the General Government. From our existing controversies with Spain, and from the tenor of the President's Address to both Houses of Congress, a conclusion was naturally drawn, that war with that country was inevitable. I had then just returned from the coast of Africa; and having been for many years employed on our own frontiers, and on a foreign coast still more barbarous and obscure, I knew not the extent of the reputation which Colonel Burr sustained in the consideration of his country. The distinguished rank which he had held in society, and the strong marks of confidence which he had received from his fellow citizens, gave me no right to doubt of his patriotism. As a military character, I had been made acquainted with him, but not personally; and I knew none in the United States in whom a soldier might more surely have confided his honor, than in Colonel Burr. In case of enmity to this country, from whatever quarter it might come, I thought it my duty to obey so honorable a call as was proposed to me. Under impressions like these, I did engage to embark in the enterprise, and did pledge my faith to Colonel Burr. At several interviews, it appeared to be the intention of Colonel Burr to instruct me by maps and other documents, of the feasibility of penetrating to Mexico. At length, from certain indistinct expressions and inuendoes, I admitted a suspicion that Colonel Burr had other objects. He used strong expressions of reproach against the Administration of the General Government; accused them of want of character, want of energy, want of gratitude. He seemed desirous of irritating my resentment by reiterating certain injurious strictures cast upon me on the floor of Congress, on certain transactions on the coast of Africa, and by dilating on the injuries which I had sustained from the delays in adjusting my account, for moneys advanced for the United States; and talked of pointing out to me modes of honorable indemnity. I will not conceal here that Colonel Burr had good grounds to believe me disaffected towards the Government."

Here, Mr. President, we find that General Eaton also was deceived, so completely deceived as to engage himself in the enterprise. Here is also evidence of the estimation in which Aaron Burr was held at Washington, the seat of the General Government, where Congress were assembled, and Mr. Smith was attending as a member of the Senate, the forepart of the year 1806, the very year when Mr. Smith is to be suspected of a crime, for extending to Colonel Burr the rights of hospitality: nor does General Eaton suspect the views and projects of Colonel Burr to be unlawful or improper, until he began to use strong expressions of reproach against the Administration. General Eaton was also a man dissatisfied with the Administration.

It is asked how it was possible for Colonel Burr to have been so long with Mr. Smith and not have disclosed to him his plans, as he had done to others. The reason is obvious; Commodore Truxtun was dissatisfied with the Government, and full of resentment; he was, therefore, the man most likely for Aaron Burr to apply to, expecting, no doubt, to engage him in his projects; to him he would be likely to communicate his sentiments and feelings with freedom. Far otherwise was the case of Mr. Smith. He was enjoying the sunshine of the Government; he was going on in the full tide of prosperity; his fellow citizens had bestowed on him the highest honors in their gift. He was a Senator of the United States; the Administration had extended to him their patronage and favor, by giving him contracts for supplying the army, and building gunboats, lucrative employments. Aaron Burr could not expect to engage this man in any treasonable plot against the Government, until he should have made him willing to sacrifice all his honors and all his prospects; and to make the communication without engaging him, was to defeat all his prospects; knowing that Mr. Smith could have no possible wish for a change, he would be the last to whom he would dare to make a disclosure of his projects. There were reasons, and strong reasons, why he should wish to preserve the confidence of Mr. Smith, which made it important to him to be on good terms with him, so long as he was attempting to blind the eyes of the people, and make them believe he was acting in concert with the Government; to do which, there could not have been a more ready expedient than to take up his lodgings at the house of the contractor for the army of the United States, and to appear to possess his confidence. All his art, all his

address, therefore, would be made use of to deceive Mr. Smith, and make him believe his views and projects were fair and honorable. This will fully explain the appearance of confidence which seems to have existed between Mr. Smith and Colonel Burr, as well as their correspondence, previous to the President's proclamation.

The gentleman from Massachusetts thinks the story about the settlement of the Washita lands so ridiculous, and the disguise so thin, that Mr. Smith must have seen through it, and known that Aaron Burr's projects were unlawful; and from that circumstance draws presumption of guilt. Is it surprising that Mr. Smith in his situation, and with the information he possessed, should believe this story, when a gentleman of Commodore Truxtun's discernment, and after having had a much more full developement of Colonel Burr's views and projects, believed it, and which in his deposition he affirms to be the fact? In answer to the following question, put by Colonel Burr, "had you reason to doubt my intention to settle lands?" Commodore Truxtun answered, "If there was no war, I took it for granted that was your intention." Nor is it so astonishing as the gentleman seems to think it, that Mr. Smith should consent to let his two sons go with Colonel Burr. It is the wish of every parent to see his children well established; and what is more profitable, or promises a more advantageous and certain establishment, than the settlement of new lands? People are generally induced very readily to believe what they wish, and is it at all surprising that Mr. Smith should be easily induced to think well of a project which was proposed to benefit his own sons? Surely his participation in Aaron Burr's treason cannot be presumed from such circumstances.

The conduct of Mr. Smith from the first moment that official information was given to the people of the United States, that Aaron Burr's projects were treasonable or unlawful, was such as, instead of exciting suspicion of his being an accomplice, merits the applause of his country. Not like a timid traitor, affrighted at the rustling of a leaf, did he endeavor to conceal the intercourse and correspondence between him and Aaron Burr; or like a bold traitor attempt to defeat the measures adopted to counteract the project and arrest the culprits; or to paralyze exertion by casting ridicule upon them, as did that prime patriot Glover, the accuser of Mr. Smith? No, sir, the day after the President's proclamation arrived, he writes a letter to the Secretary of War informing him of the substance of Aaron Burr's communication to him. He finds that the militia called into service on this occasion, were destitute of arms, and unable to obtain them from the public stores of the United States, though application had been made for that purpose by the commanding officer; and that without arms they could render no service. He goes in the night to the keeper of the arms, and endeavors to persuade him to deliver them out, who still refused, though shown the President's proclamation, without an order from the Secretary at War; fearing he might lose his office for acting without orders. Under these circumstances, this same John Smith, charged with being an associate of Aaron Burr in this very treason, pledged his own private obligations for ten thousand dollars to indemnify the officer for delivering out the arms. This was done, not after Aaron Burr was arrested, or there was a prospect of the project's being defeated; but immediately, on the first alarm excited by the President's proclamation, and the spirited and patriotic exertions of the State of Ohio.

The gunboats which Mr. Smith was building, and which his accusers have intimated were intended for Colonel Burr, were afterwards carried down the river to New Orleans and delivered to the order of General Wilkinson; and all the provisions purchased by Mr. Smith appear to have been fairly and promptly delivered to our army; not a man—not a musket—not a barrel of flour—not a single article of provisions of any kind—or anything that could aid or comfort Colonel Burr in his expedition has ever been furnished to him or any of his agents. How then has Mr. Smith participated in the treason of Aaron Burr? I find no evidence of the fact. I can discern no reasonable ground to suspect any such participation.

The testimony of Colonel Taylor, whom I deem a man of honor and truth, furnishes one other ground from which a presumption is attempted to be drawn to implicate Mr. Smith. He says that in conversing with Mr. Smith about certain political publications in a newspaper, signed the Querist, in which a division of the Union and a separation of the Western from the Atlantic States was advocated, he understood Mr. Smith to advance those sentiments as his own. Mr. Smith says he only described them as the sentiments of the writer. Suppose Colonel Taylor's recollection to be correct, what crime was there in advancing mere speculative opinions, or expressing his sentiments on that or any other subject, provided he violated no law. Are we not in a free country, in which it is lawful to speculate on the science of government as well as any other? If that privilege be denied, ours will no longer deserve the name of a free country. But is it not possible that Colonel Taylor may be mistaken? How often do we find conversations which take place among friends misunderstood and incorrectly stated! Every day's experience shows us that even in public debate, in this Senate, the observations of gentlemen are so misstated as to require explanation. But Dr. Sellman's deposition removes all doubt; he says, and he is admitted to be a man of good character, that he understood Mr. Smith only to have repeated, not his own sentiments, but those of the Querist. Dr. Sellman testifies:

"The first persons I approached were Mr. John Smith and Colonel James Taylor. After attending some time to the conversation, I noticed a reference was occasionally made to a publication or publications that had appeared in the Marietta paper. For some time I was at a loss to determine whether those gentlemen were expressing their own opinions, or those contained in that publication, for I was not present at the commencement of the conversation, though it did appear to me to be a detail of the opinions set forth in that publication.

As it is now impressed on my mind, I believe, to more fully satisfy myself, I asked a question. Nor can I perfectly remember, whether I intended the question particularly for Mr. Smith or both of the gentlemen, but believe it was intended for Mr. Smith. Do you expect or apprehend an early separation of the Union? To which Mr. Smith replied, not in my life-time; and I hope and pray to God I may never live to see it, whether it takes place sooner or later."

Here can be no mistake; so far from engaging in a treasonable plot to sever the Union, he deprecated such an event in the most solemn manner. Where then is the evidence whereon we can ground so important a vote as that which shall adopt the resolution on your table? A vote which is to disrobe a Senator of his office and of his honor? Nothing but jealousy, that jealousy which frequently attaches itself to a charge of treason and conspiracy, and must in this case have taken hold of the mind of the gentleman from Massachusetts, could have induced a belief that there was evidence to prove on Mr. Smith a participation in the conspiracy of Aaron Burr. That master of the human heart, Shakspeare, says—

> "——Trifles, light as air,
> Are, to the jealous, confirmations strong,
> As proofs of holy writ."

The truth of this is remarkably verified in the case before us. Is there not some reasons to apprehend that there has been too great a disposition to convert suspicion into proof? Ought we not to be on our guard when it is proved that there has been a powerful combination of men, calling themselves a republican society, to ruin Mr. Smith, the individuals of which, when called before a magistrate to testify, declare that they are bound to secrecy by a solemn obligation to the society, which is paramount to their oath, when sworn as witnesses, and which will not admit of their disclosing any facts, or their proceedings, any farther than they are permitted to be made public by the society? And in sundry of the depositions on your table they have accordingly refused to answer questions, and in some instances to testify at all. Such a society disgraces the name of Republican, by acting on principles tyrannical and oppressive.

I have detained the Senate longer than I intended; but to Mr. Smith the cause is all-important, and we ought to pause before we condemn a fellow-Senator upon the ground of mere suspicion—direct proof there is not; we ought not hastily to agree to a resolution which shall fix perpetual infamy on a fellow man, an amiable family, and his unoffending posterity; for the infamy which will be attached by a vote of expulsion will not be forgotten so long as this Senate and the nation shall endure.

Mr. GILES.—Mr. President: I am called upon as a member of this Senate to pronounce an opinion upon the following resolution:

"*Resolved*, That John Smith, a Senator from the State of Ohio, by his participation in the conspiracy of Aaron Burr, against the peace, union, and liberties of the people of the United States, has been guilty of conduct incompatible with his duty and station as a Senator of the United States, and that he be therefor, and, hereby is, expelled from the Senate of the United States."

A declaration upon this subject ought not to be made, but upon the most attentive examination of the evidence produced in the case, and the most mature deliberation thereupon. The sentence to be pronouced is important to the justice of the United States; but more particularly so to the reputation of the person accused; it will have also an inseparable influence upon that of his family. To him and them its effects are all-important. The resolution solemnly and unequivocally asserts, that John Smith, &c. participated in the conspiracy of Aaron Burr. Before I can make this assertion, I must have some evidence of the fact. I must acknowledge, that upon the most attentive examination of all the papers, and the most respectful attention to all the arguments in the case, I have not been able to discover any satisfactory evidence of that fact. Yesterday I paid great attention to the eloquent, dignified and candid observations of the gentleman from Massachusetts (Mr. ADAMS,) both as to the jurisdiction of the Senate to inquire into this case, and the evidence exhibited in support of the charges against the accused. The gentleman from Massachusetts, I am perfectly convinced, has been influenced in the whole course of this inquiry by the purest and most laudable motives; and I think he is justly entitled to the thanks of the Senate for the judicious conduct he has recommended to be pursued. I perfectly concur with that gentleman in opinion, on the point of jurisdiction; and upon a retrospect of the whole proceedings of the Senate, I am happy to say, that it appears to me the best course for the purposes of justice, has been pursued, that could have been devised, in the novel and difficult case presented for consideration. A liberal indulgence has been given to the accused to procure testimony in his defence; and the witnesses implicated have been protected from injury, by requiring that they should have notice of the time and place of taking all depositions affecting their credibility. The only ground of difference in opinion between the gentleman from Massachusetts and myself, is, in the interpretation of the evidence in the case. I shall state the points of difference between us upon this subject, without any other argument than what may be necessary to explain the reasons of this difference.

The first point of difference relates to the declarations of Aaron Burr. From these declarations, although general in their nature, and in no instance made in relation to the accused, inferences of guilt are attached to him. In almost every case, to apply the declarations of one man to the condemnation of another, would not be a just rule of evidence; in this case, it would be peculiarly unjust. Because it is well known that Burr was in the constant habit of making misrepresentations in relation to other persons, and that he was influenced by a particular motive in doing so. He appeared to consider that as one of the most effectual means to enhance the importance and promote the success of his enterprise. If his declarations are to be admitted as evidence against

other persons, they would apply to some of the most respectable citizens of the United States as well as to the accused, which it is not pretended would be just or correct in relation to them; and I can see nothing in his observations bearing on the case of Mr. Smith, that would not apply with a greater force against others, who are neither implicated nor suspected. I therefore put Burr's declarations entirely out of the case, and disregard all inferences drawn from them.

The next point of difference between the gentleman and myself, arises from a suggested inconsistency between the letters, the affidavits, and the answer of Mr. Smith. I have paid particular attention to these papers, connected with the remark made by the gentleman, and am unable to discover the inconsistency suggested. They appear to me to be substantially the same. The remark was, that in one of these papers Mr. Smith states, that Burr did not disclose to him any of his objects; in another he admitted that he did disclose to him his object of settling his Washita lands. The remark which occurs to me in reply is, that Mr. Smith merely states an immaterial fact in one paper, which he omits in another, as unnecessary. In this, I see neither contradiction nor inconsistency. But the real explanation of this incidental circumstance will be found in the papers themselves. The one omitting the fact in question, in speaking of the objects of Burr, evidently alludes to the unlawful objects of which he has since been accused, and which did not comprehend the settlement of the Washita lands. This circumstance, therefore, must in any point of view be deemed trivial unless connected with some other of more importance; and according to my explanation of it, of no consequence at all. I would here remark, that the fact asserted in the resolution, is susceptible of the clearest and most certain proof, and is of such a nature, that if Mr. Smith had committed it, it would be scarcely possible for him to escape detection by positive proof. I am therefore not satisfied to form my opinion on trivial circumstances, particularly when so easily and naturally susceptible of explanation, consistently with innocence. Mr. Smith's own conduct is the sole criterion by which he ought to be judged. If this standard should once be departed from, and questionable incidents resorted to, instead of obtaining truth, we shall probably fall into error.

The gentleman from Massachusetts and myself, in our consideration of this case, concur in the entire exclusion of the testimony of Elias Glover and all the papers connected with it. We, in one respect however, differ on this part of the subject. He read and relied upon the deposition of Major Riddle forwarded by Glover, which I exclude from all consideration—not because I know anything injurious to the character of that gentleman; nor because I conceive the contents of the deposition incapable of explanation, consistently with the innocence of Mr. Smith; but on account of the manner of taking, and presenting it to the Senate. This deposition with others appears to have been taken and forwarded by Elias Glover, for the purpose of implicating Mr. Smith. They were taken without notice, and in the absence of Mr. Smith, although I believe he was at the time of taking them in the same town where they were taken. Some of these witnesses had been summoned to testify in his favor and in his presence—part of them refused to attend, part of them attended and refused to answer all questions put to them by Mr. Smith. I consider this conduct as such a departure from everything that is just, fair, and honorable, and an evidence of such an incorrect state of mind in relation to Mr. Smith, that I do not think they are entitled to the respect of evidence in the examination of his case; I therefore exclude them altogether.

I consider this conduct as disrespectful to the Senate, and, on the part of Glover, altogether inexcusable. Because, when the Senate were informed that Mr. Smith intended to attempt to discredit the evidence of Glover, they imposed a positive condition on him, that Glover should have reasonable notice of the time and place of taking all depositions for that purpose; thus manifesting a laudable tenderness for his reputation, which he has strangely repaid in this disrespectful attempt upon the fairness, justice, and candor, of their proceedings. I cannot forbear making one more observation on the conduct of Elias Glover: he appears, throughout the whole of the depositions taken by him and in his presence, to endeavor to cover his own misconduct by enlisting in his favor the party feelings, which he presumes to attribute to the Senate; thus he has invariably asked, whether he was not a zealous Republican, and firm supporter of this Administration? I consider this conduct as an unjustifiable and indelicate attack upon the justice and candor of the Senate, whilst it furnishes a poor apology for his own abberrations from the truth; it has a tendency, and must have been intended, upon a question of guilt or innocence, to draw the Senate from the immutable principle of justice and truth, *as the standard of trial*; and to substitute, in their stead, the dangerous touchstone of party sensibility. I have had too long experience of the correct motives which actuate the Senate in all their deliberations, to feel any apprehensions, in the present case, from these unfortunate attempts; but it is time the world should know, that they are improperly applied, when addressed to the Senate of the United States.

Having candidly stated the impressions upon my mind made by the portion of the papers just alluded to, and the observations of the gentleman from Massachusetts thereupon, I will now proceed to examine the other papers more relied on by him, and entitled to more respect as evidence. The course the gentleman pursued was fair and candid, and well calculated to give a correct view of the conduct and object of the accused; I shall, therefore, pursue the same course, which was to take the facts in their chronological order. The first fact, in relation to Mr. Smith's conduct, to which our attention has been called, was on the 4th of September, 1806. On this day Burr, having previously addressed a note of invitation to Mr. Smith, presented himself at Mr. Smith's

house, where he was hospitably received and entertained, until the tenth of the same month. Burr had, before this time, been at Blannerhasset's Island, where it is probable, in concert with Blannerhasset, certain pieces, under the signature of the Querist, were written; and, about the time of Burr's leaving the Island, were published. The object of these pieces evidently was to make an experiment upon the disposition of the Western people, as to the separation of the Union, then certainly in the contemplation of Burr. It was an object near his heart, and, no doubt, deemed all-important to the success of his ambitious views. Mr. Smith states that this subject was never mentioned by Burr to him during his stay at Mr. Smith's house, from the 4th to the 10th of September. The observation made upon this part of the evidence, is, that it is strange that Burr should not have mentioned this subject, under the peculiar circumstances of the case. I concur, perfectly in the observation. I think it strange that Burr should not have mentioned the subject; but am I to infer that he did mention it, merely because it is strange that he should not have mentioned it? Is its being strange, that it did not happen, evidence of the fact, that it did happen; particularly, when there is no other evidence of the fact, but all the evidence upon that point is against the fact? I will here make an observation, of a general nature, which has had great weight with me in forming my opinion upon the whole merits of this case. It is, that it does not appear, from any part of the evidence, that Burr deemed it prudent, at any time, to disclose his illicit objects to Mr. Smith; or that he ever considered Mr. Smith as a safe depositary of his secrets. This want of confidence in Mr. Smith, for his illicit objects, is discernable in many parts of the evidence, and this consideration alone lessens the presumption of Burr's making the separation of the Union a subject of conversation whilst at Mr. Smith's house. Burr, also, would naturally be cautious and reserved upon that subject, until the experiment, then about to be made on the people, should disclose itself, and some certain estimate be formed of its effects. Again, sir, whilst Mr. Smith has solemnly sworn that such conversation did not take place, and there is no evidence whatever to show that it did—there are other circumstances strongly supporting his assertion. It is known that Burr generally disclosed his plans to persons unfriendly to the Administration, and feeling strong excitements and irritations against it. He considered such persons only fit for his purposes. In this, however, much to the honor of American citizens, he was mistaken. But he had no reason to believe Mr. Smith was a person of this description. Very far otherwise. For, independent of Mr. Smith's general attachment to the Administration, he held the dignified station of Senator, and a profitable contract under the Government: Burr had no reasonable expectation that Mr. Smith was ready to abandon these certain advantages for the uncertain prospects arising from Burr's wicked and visionary projects; and, of course, would be cautious of making such an unpromising attempt; one, which, if it failed, would subject him to certain and instantaneous detection. Another strong circumstance in favor of this conclusion, is derived from Burr's letter to Mr. Smith, of the 20th of October, 1806. One of the expressions alluded to, is the following: "I have never written or 'published a line on this subject, (the separation 'of the Union,) nor ever expressed any other sen-'timents than those which you have heard from 'me in public companies, at Washington and 'elsewhere, and in which, I think, you concurred." Here is a direct reference to this subject, but it is not intimated that any conversation took place at Smith's house in relation to it, but "in public companies at Washington and elsewhere." As far, therefore, as mentioning the conversation as happening at other places, and omitting it as having happened at Mr. Smith's house, upon a recent visit there, can go, it serves to show that such conversation, in all probability, did not take place there, and leaves a very strong inference in favor of Mr. Smith's statement. Am I, then, to infer a fact of guilt against all these circumstances in favor of innocence? My mind is incapable of making such an inference. It would be, to convert the rules of the evidence of facts into improbable grounds of inducing suspicions—error, not truth, must be the consequence of such substitution.

The next evidence in point of time from which some circumstances of suspicion are inferred against Mr. Smith, is the testimony of Colonel James Taylor. To this evidence, I concur with the gentleman from Massachusetts in paying great respect, because it was given with intelligence, candor, and circumspection, highly honorable to Colonel Taylor. The substance of his testimony is, that some short time after the 10th September, and after the pieces under the signature of the Querist had been published, and become the subject of general conversation, being in company with Mr. Smith and others, in Cincinnati, the sentiments avowed in those pieces became the subject of a particular conversation, in which, according to the impressions made on his mind, Mr. Smith advocated a separation of the Union; and he thought, not only delivered this opinion, as an opinion recommended by the Querist, but as his own. I differ in several important respects with the gentleman from Massachusetts as to the true explanation of this testimony, taken in connexion with other evidence, bearing irresistibly upon the same point. In the first place, it is to be ascertained, whether Mr. Smith really did express this opinion in the sense imputed to him by Colonel Taylor, or whether Colonel Taylor is not mistaken in that respect? And, in the next place, whether, if he did so express himself, it was done with any mischievous intent?—both these circumstances being necessary to constitute a criminal act. I am strongly inclined to think, indeed I am almost perfectly satisfied, that Colonel Taylor is mistaken in this particular point of his evidence. There is part of Colonel Taylor's own evidence, which furnishes strong considerations

for caution in interpreting the rest. The candor and circumspection observed by the deponent, in this particular point of evidence, is so honorable to him, that I beg leave to present it to the Senate in his own words. After answering many questions put to him by Mr. Smith, Colonel Taylor concludes his evidence with the following voluntary observation: "I beg leave further to state, 'that Mr. Smith has generally been viewed as a 'friendly, benevolent, worthy man, and his fami-'ly, (consisting of an amiable wife, and daughter, 'and several very promising sons,) have been con-'sidered entitled to, and held a place in the first 'circles of society in our quarter."

What could have induced Colonel Taylor to make this observation upon closing his evidence? There is no doubt, sir, it was intended as a caution to the Senate in the interpretation of other circumstances, although related by himself. It evidently arose from a consciousness that those circumstances were vague and uncertain, and that his impressions of them might be mistaken. It was the spontaneous conviction of an amiable mind, laboring under an impression, that innocence might become the victim of its own honest misconceptions. I will now state my reasons for the conviction that Colonel Taylor was mistaken in supposing that Mr. Smith spoke of the separation of the Union as an opinion of his own, and not as the opinion inculcated by the Querist.

The opinions expressed in the Querist had not only become the subject of general conversation, but were the subject of that particular conversation. Mr. Smith probably recited these opinions in an unguarded manner; and from that circumstance, it was not unnatural that Colonel Taylor's impressions might have been formed. This appears from the deposition of Doctor Sellman, who was present at the same conversation; and swears expressly that he was induced to put this question to Mr. Smith, most probably from the unguarded manner of expressing himself: Are these your own opinions, or those expressed in the Querist? To which Mr. Smith replied, they were the opinions of the Querist, and not his own opinions; and added, that he deprecated a separation of the Union, and hoped to God never to live to see the day when that event should take place. Here is the positive evidence of Doctor Sellman to the particular fact in question; whereas Colonel Taylor speaks of the impression made on his mind by the whole tenor of the conversation. Colonel Taylor must therefore be mistaken, or Doctor Sellman wilfully forsworn. Would it be proper to make this presumption against Doctor Sellman? Who is Doctor Sellman? A gentleman of irreproachable character; the friend and brother-in-law of Colonel Taylor; and, I believe, the friend of the Government and of the Administration. Doctor Sellman does not stop here; he swears that he is in habits of intimacy with Mr. Smith, and that he never did, before or since that period, hear Mr. Smith express any opinion in favor of a separation of the Union, but has often heard him express opinions directly and positively against it. Does Colonel Taylor contradict this statement? No, sir, but confirms it. He also swears that he never heard Mr. Smith express that opinion at any other time before or since. Now, sir, as Col. Taylor himself states that the pieces signed the Querist, were the subject of the conversation in question, and that he never before or since that time, heard Mr. Smith express analogous opinions with those of the Querist; and when Doctor Sellman swears positively, that during that particular conversation, he put the identical question to Mr. Smith, Are you speaking your own opinions, or those of the Querist?—and that he unequivocally answered, not his own, but those of the Querist? and, also, swears positively that he never did, before or since that time, hear Mr. Smith express analogous opinions to those of the Querist, but often the reverse—would it not be a strange perversion of the rules of evidence to say, that on that particular occasion alone, he expressed opinions in direct hostility with those expressed during the whole course of his life, both before and afterwards? But this is not all. This case furnishes evidence still more conclusive, if possible, in favor of my interpretation.

If Mr. Smith had been in the habit of expressing this opinion, would not the zeal, the activity, and the intelligence, of Elias Glover and his associates, have discovered and communicated it? Men, who, not content with the most inveterate accusations and persecutions against Mr. Smith, in their individual capacities, have formed clubs, and at length associated themselves in a corporate character under the imposing name of the Republican Society, for that and other purposes. After their profusion of other charges, which they could not substantiate, is it to be presumed that they would have omitted this charge, if it had been true, and thus could have substantiated it? Their not having made, is almost conclusive proof with me, that it did not exist. But further, what does General Carberry say upon this subject? That he is in habits of intimacy with Mr. Smith, and that he never heard him express a sentiment in favor of the separation of the Union, but often the reverse. That he did, however, on one occasion, hear Colonel James Taylor express an opinion, in company with several persons, that a separation of the Union would take place at some distant time, say ten or twelve years. And upon his asking Colonel Taylor, after retiring from the company, if he did not think it imprudent to express that opinion, even speculatively, Colonel Taylor admitted that he thought it was, and made some patriotic observations on the occasion.

This leads me to examine the second question in relation to this point. Even admitting that Mr. Smith did express the opinion attributed to him by Colonel Taylor, *as his own*, was it done with any criminal intent? I am satisfied it was not.

I cannot help remarking here, that I do not concur with the gentleman from Connecticut, (Mr. HILLHOUSE,) who seemed to intimate that there was nothing criminal in expressing speculative opinions in favor of a separation of the Union. In my opinion, if the expression of that speculative opinion be

accompanied with an intent to gain proselytes, and thus to effect the object, it is highly criminal; because it is an opinion tending directly to subvert the Constitution and Government of the United States, and to attempt that object in any way, I deem highly criminal. What is treason but speculative opinions against the fundamental principles of the Government, accompanied with an attempt to carry such opinions into effect by force?

The only difference, therefore, between these offences consists in this: that the criminal object in the one case is to be effected by force; in the other by persuasion. But I do not believe that Mr. Smith could have any such object in view. To whom was this conversation addressed? To gentlemen of the first respectability—known to be firm friends of the Government. To Colonel Taylor, to General Findley, to Dr. Sellman, &c., &c. Could Mr. Smith presume for a moment that he could make proselytes of gentlemen of this description? Could he suppose that they were fit objects to be used in illicit enterprises? Certainly not. Does either of them state that he made any attempts of this kind? Certainly not. Is there any other instance of his having expressed any opinion in favor of a separation of the Union during the whole course of his life? Certainly not. This is the only solitary instance of such an expression that has been adduced or pretended. Is there any criminal intent ascribed to Colonel Taylor for the expression of a similar opinion to General Carberry? Certainly not. What rule of evidence is applicable to Mr. Smith which is not applicable to Colonel Taylor? Is it just to condemn one man for the expression of an opinion, when the expression of the same opinion by another does not even subject him to suspicion? From all these circumstances I am satisfied, first, that Mr. Smith did not express the opinion in favor of the separation of the Union, in the sense attributed to him by Colonel Taylor; and, in the next place, if he did, it was not expressed with any criminal intent. The next evidence, in point of time, from which inferences are drawn injurious to Mr. Smith, is the testimony of Peter Taylor. It relates to circumstances which took place at Mr. Smith's house on the 23d of October, and shortly afterwards. The first observation made in relation to this point is, that Mr. Smith, in his answer, states that Peter Taylor is a man unworthy of credit, for several reasons mentioned by him, and that he was incorrect in his evidence in the recital of several incidental circumstances; whereas it is said that Peter Taylor is a man of fair character, though ignorant and uninformed, and that his testimony is unimpeached. I readily admit that Mr. Smith's impressions in relation to Peter Taylor's character are more unfavorable than are warranted from the state of the evidence before the Senate; but this is not wonderful, when all circumstances are considered. When it is considered that a deadly wound to Mr. Smith's character was apprehended by him to be about inflicted by Peter Taylor's evidence, which consisted principally in the recital of incidental circumstances, in some of which he was evidently mistaken; when all the knowledge Mr. Smith had of him was, that he was one of Blannerhasset's servants, and presumed to be both ignorant and uninformed, it is not wonderful that Mr. Smith should have entertained a worse opinion of him than he merited; but I see nothing criminal in this misconception. It was a perfectly innocent and natural one.

I readily also admit that, in general, Peter Taylor's character for truth and veracity stands unimpeached, although it must at the same time be admitted that he was mistaken in some of the many incidents he relates; and in one very remarkable instance, to wit: forgetting the death of his wife, which happened about six weeks before, he mentions a circumstance of making a further provision for her support. I mention this, however, not for the purpose of having an injurious influence upon the general course of his evidence, but merely as a caution against paying too much respect to the episodes or the incidental circumstances mentioned by witnesses, and particularly by him. Inferences of guilt ought very cautiously to be drawn from such sources. But I see nothing in the material and substantial part of Peter Taylor's evidence but what is perfectly consistent with Mr. Smith's innocence, and, in my judgment, tends strongly to support it. As this evidence has been very much relied upon to criminate Mr. Smith, let it now be critically examined in a spirit of justice and impartiality. Peter Taylor's evidence is substantially as follows: During the month of October, Mrs. Blannerhasset having become very much alarmed for the safety of her husband, in consequence of the resentment of the people in the neighborhood against him, produced by the pieces under the signature of the Querist, which he acknowledged himself to be the author of; and believing that Burr had instigated him to that conduct, dispatched Peter Taylor, her gardener, in quest of Blannerhasset, with a letter, requesting that he would return to the island, and would prohibit Burr from again returning thither. Being uncertain where Blannerhasset might be, but presuming he would be found with Burr, she directed Peter Taylor to search for him, first at Chilicothe, and if he should not be found there, at Cincinnati, and to inquire at the house of John Smith, store-keeper. In pursuance of these instructions, Peter Taylor being unsuccessful in his search at Chilicothe, arrived at Mr. Smith's house in Cincinnati on the 23d of October. When Mr. Smith came out to him, he inquired for Burr and Blannerhasset; his object, he states to be, to see if Mr. Smith could give any account of them. Mr. Smith first told him that he had mistaken the place; that they were not there, and he knew nothing of them. But upon telling Mr. Smith that he was one of Blannerhasset's servants, and was sent in quest of him by Mrs. Blannerhasset, Mr. Smith took him up stairs to a chamber he was accustomed to write in, to write a letter to Mr. Blannerhasset, and told him they would probably be found at Mr. Jourdan's in Lexington, Kentucky, where it appears from his evidence that Mrs. Blannerhas-

set originally intended that he should go, if he should not find Blannerhasset before he should arrive there, &c. From these circumstances, strong instances of guilt are deduced against Mr. Smith. Making allowances for the eccentricities of Peter Taylor's recital, and the inaccuracies of some trivial incidents, which appear to me very obvious, I see nothing at all improper or unnatural in Mr. Smith's conduct. Upon Peter Taylor's first inquiry, Mr. Smith supposed he was mistaken in the place. Was not this supposition very natural, when probably Blannerhasset never was at Mr. Smith's house at all, and Burr had left it the 10th September preceding, nearly six weeks before that time, and certainly was both mysterious and rapid in his movements; but when Peter Taylor tells Mr. Smith that he was going in quest of Blannerhasset, with a letter from Mrs. Blannerhasset, to Lexington; then Mr. Smith tells him he will probably find them at Mr. Jourdan's—the place where it is probable Burr told him he should take his lodgings—and proposed to send a letter to Blannerhasset by the witness, which he immediately wrote and gave to the witness; during which time there was some very common, and, in my judgment, very immaterial conversation, between Mr. Smith and the witness, perhaps not very accurately related. So far, certainly this transaction cannot be deemed criminal; but the letter addressed to Blannerhasset covered one to Burr, and upon its being presented to Burr, who was found at Lexington before Blannerhasset was, Burr premising that it contained one addressed to him, opened it, and found that he was right in his conjecture. This circumstance is said to be extremely suspicious, and from it an improper connexion between Colonel Burr and Mr. Smith is inferred. I readily admit, that in itself it is a suspicious circumstance; and if the evidence stopped here, it might be difficult to account for it without some grounds for the inference of such connexion. But I consider the evidence upon this point complete and positive, and that there is nothing left to inference. In the first place, it should be recollected that Peter Taylor was in quest of Blannerhasset with a letter for him from his wife; the presumption, therefore, was, that he would find Blannerhasset before he did Burr; and, if so, he would not find Burr at all, because his object would be answered, and his journey at an end. This circumstance, no doubt, induced Mr. Smith to put his letter to Burr under cover to Blannerhasset; but as Burr, contrary to Mr. S.'s expectation, was first found, why did he open the letter to Blannerhasset, upon the presumption that it contained one for him? Although I think this circumstance of no importance, as the letter itself is before us, I will yet state my impressions respecting it. Burr probably knew that Blannerhassett was an entire stranger to Mr. Smith; he therefore thought it improbable that Mr. S. would write to him; Burr could also discover, by feeling the letter, that it contained an enclosure, and as he had but recently abused Mr. Smith's friendship and hospitality, and knew of the unfavorable impressions on the public mind against every one who had confided in him in any way whatever, it is but natural to conclude he conjectured that Mr. Smith had availed himself of the opportunity by Peter Taylor of writing to him upon that subject. But why are explanations of this circumstance called for? Why indulge suspicions respecting an object, when the object of such suspicions is itself before us? Why infer an improper connexion, when the evidence of the real connexion, or the object of the correspondence itself, is before us? This will be found in the identical letter written by Mr. Smith to Mr. Burr, and delivered by Peter Taylor. Let us discard inferences, and attend to the contents of the letter, and see if there is anything criminal in them. The authenticity of this letter is admitted by all.

No. 21.

J. Smith's letter to A. Burr, 23d October, 1806, sent by Peter Taylor.

CINCINNATI, *Oct.* 23, 1807.

DEAR SIR: Having an opportunity of writing a line by one of Blannerhasset's domestics, I beg leave to inform you that we have in this quarter various reports prejudicial to your character.

It is believed by many that your design is to dismember the Union. Although I do not believe that you have any such design, yet I must confess, from the mystery and rapidity of your movements, that I have fears, let your object be what it may, that the tranquillity of the country will be interrupted, unless it be candidly disclosed, which I solicit, and to which I presume you will have no objection.

I am, dear sir, your most obedient servant,

JOHN SMITH.

Colonel BURR.

I differ more from my honorable friend from Massachusetts, upon the interpretation of this part of the evidence than upon any other, and think his inference more unreasonable and improbable. He seems to admit that the letter itself contains nothing criminal, but infers a criminal intent in writing it. He supposes it to have been the effect of an arrangement previously concerted with Burr to divert and deceive the public attention, and seems to consider it a masterpiece of diplomatic skill; and thus he ascribes to Mr. Smith the character of consummate duplicity. I think the character of this transaction is just the reverse. I think it the letter of a plain, unsuspicious, deluded man. It should be observed, that, it is scarcely possible that such an arrangement should have been made between Burr and Mr. Smith as is presumed; because, at the time Burr left Mr. Smith's house, neither of them could have been apprized of Peter Taylor's mission. He was sent by Mrs. Blannerhasset, without the knowledge of either of them, in consequence of circumstances which had taken place after Burr had left the island, as well as Mr. Smith's house; circumstances which Mr. Burr could not have wished or expected, and, therefore, could not be presumed to have taken precautions against them; nor can it be presumed that Mr. Smith could have availed himself of an opportunity of which he was no apprized, in a moment, without a minute for de

liberation, to contrive and execute such a plan; nor could Burr have been furnished with any clue to his object, if he had. It would, indeed, have been a *chef d'œuvre* in the diplomatic art; it would have been beyond the skill of the Prince of Benevento himself; nor could Mr. Smith have been made competent to it by his most diligent attention as the Prince's pupil for three months, being about the time, in the course of Mr. Smith's whole lifetime, in which he is presumed to be completely converted from a plain dealing, honest man, into the prince of intriguers and negotiators. Human nature is not capable of such a conversion, if it wished it; Mr. Smith could not, if he would, have thus metamorphosed his own character. The inferences of the gentleman, therefore, are strained, unnatural, and scarcely possible. If we give the letter its common and natural import, it is perfectly innocent, if not laudable. Mr. Smith, doubtless, felt some uneasiness at the general resentment displayed against Burr, and might apprehend it would be applied to him in consequence of having hospitably entertained Burr at his house; and, believing Burr to entertain no dishonorable views, he very naturally and properly wrote to him to disclose his objects, that he might tranquillize the public mind respecting them. But inferences are made from Burr's letters, in reply, unfavorable to Mr. Smith. I differ entirely with the gentleman from Massachusetts, in the interpretation of the contents of that letter. This latter, being in reply to Mr. Smith, is such a material part of the evidence, that I wish to present it entire to the Senate:

"*A. Burr's answer to John Smith, Oct.* 26, 1806.

"LEXINGTON, *Oct.* 26, 1806.

"DEAR SIR: I was greatly surprised and really hurt by the unusual tenor of your letter of the 23d, and I hasten to reply to it, as well for your satisfaction as my own. If there exists any design to separate the Western from the Eastern States, I am totally ignorant of it; I never harbored or expressed any such intention to any one, nor did any one ever intimate such design to me. Indeed, I have no conception of any mode in which such a measure could be promoted, except by operating on the minds of the people, and demonstrating it to be their interest. I have never written or published a line on this subject, nor ever expressed any other sentiments than those which you may have heard from me in public companies at Washington, and elsewhere, and in which I think you concurred.* It is a question on which I feel no interest, and certainly I never sought a conversation upon it with any one; but, even if I had written and talked ever so much of the matter, it could not be deemed criminal.

"But the idea, I am told, which some malevolent persons circulate, is, that a separation is to be effected by force; this appears to me to be as absurd and as unworthy of contradiction, as if I had been charged with a design to change the planetary system. All the armies of France could not effect such a purpose, because they could not get here, and if they could get here, they could not subsist, and if they could subsist, they would certainly be destroyed.

"I have no political views whatever; those which I entertained some months ago, and which were communicated to you, have been abandoned.*

"Having bought of Colonel Lynch four hundred thousand acres of land on the Washita, I propose to send thither this Fall a number of settlers, as many as will go and labor for a certain time, to be paid in land and found in provisions for the time they labor—perhaps one year. Mr. J. Breckenridge, Adair, and Fowler, have separately told me that it was the strong desire of the Administration that American settlers should go into that quarter, and that I could not do a thing more grateful to the Government. I have some other views which are personal merely, and which I shall have no objection to state to you personally, but which I do not deem it necessary to publish; if these projects could any way affect the interests of the United States it would be beneficially, yet I acknowledge that no public considerations have led me to this speculation, but merely the interest and comfort of myself and my friends.

"This is the first letter of explanation which I have ever written to any man, and will probably be the last. It was, perhaps due to the frankness of your character, and to the friendship you once bore me. I shall regret to see that a friendship I so greatly valued must be sacrificed on the altars of calumny.

"Be assured that no changes on your part can ever alter my desire of being useful to you, and pray you to accept my warmest wishes for your happiness.

"A. BURR.

"It may be an unnecessary caution, but I never write for publication.

"HON. JOHN SMITH."

The first observation made by the gentleman from Massachusetts, upon the contents of this letter, was, that it appeared wonderful to him that this letter should have reinstated Burr in Mr. Smith's good opinion, after some doubts of his views had been excited in Mr. Smith's mind, by the general clamor of the country against him. The impression produced upon my mind, by observing the contents of this letter, is just the reverse. I think the letter written with great art and address, and well calculated to produce the effect on Mr. Smith's mind, which he states it did produce, the restoration of Burr to his confidence. To form a just opinion on this point, it should be recollected that Burr had previously insinuated himself into Mr. Smith's confidence, and that Mr Smith was not at that time apprized of his illicit objects; because, at that time, they were not generally disclosed; and because, it appears, from several passages in the letter itself, that Burr had not disclosed them to Mr. S. Since Burr's objects have been generally known, we may find passages in the letter obscurely pointing toward them. O this description is the one referred to by the gentleman from Massachusetts. Speaking of the separation of the Union, Burr writes:

NOTES in the handwriting of Mr. Smith.

* Mr. J. Smith has heard Colonel Burr and others say that, in fifty or an hundred years, the territory of the United States would compose two distinct Governments.

*Mr. J. Smith presumes that Mr. Burr refers to an invitation to settle in Tennessee, of which he heard him speak.

"Indeed, I have no conception of any mode in which such a measure could be promoted, except by operating on the minds of the people, and demonstrating it to be their interest."

The very mode, says the gentleman, which he was then pursuing. This is very true, but of that it is certainly not in proof that Mr. Smith had any knowledge; and this letter serves to demonstrate, in connexion with many other circumstances, that he had not. But, in the very next sentence, Burr proceeds:

"I have never written or published a line on this subject, nor ever expressed any other sentiments than those which you may have heard from me in public companies at Washington and elsewhere."

And immediately preceding it, he thus writes:

"If there exists any design to separate the Western from the Eastern States, I am totally ignorant of it; I never harbored or expressed such intention to any one, nor did any person ever intimate such design to me."

Now, sir, take these sentences together, and let any candid mind say, circumstanced as Mr. Smith was, in relation to Burr, whether it was not perfectly natural for him to draw the conclusions he did? Whether these sentences do communicate to Mr. Smith any illicit object on the part of Burr? Whether they do not contain a denial of any intention or effort on his part to effect a separation of the Union? To my mind they do. I am not, therefore, surprised that Mr. Smith drew the inference from them which he did; and I should have been much surprised, indeed, if, from them alone, he had drawn any inference of improper views on the part of Burr. I said there were passages in this letter, which furnished the strongest presumption that Mr. Burr had not communicated his illicit objects to Mr. Smith. Let me now call the attention of the Senate to some of them. After speaking of his intention to settle the Washita lands, Burr writes thus:

"I have some other views, which are personal merely, and which I shall have no objection to state to you personally, but which I do not deem it necessary to publish; if these objects could in any way affect the United States, it would be beneficially," &c.

If Burr had already communicated his views to Mr. Smith, why should he say in this letter, "I shall have no objection to state to you personally;" certainly if he had already stated them, this profession would not only have been unnecessary, but foolish. Burr again writes:

"This is the first letter of explanation which I have ever written to any man, and will probably be the last. It was, perhaps, due to the frankness of your character and to the friendship you once bore me; I shall regret to see that a friendship I so greatly valued, must be sacrificed on the altars of calumny. Be assured that no changes on your part can ever alter my desire of being useful to you; and I pray you to accept my warmest wishes for your happiness."

Here follows the postscript:

"It may be an unnecessary caution, but I never write for publication."

From the whole tenor of this letter the real connexion between Mr. Smith and Burr may be easily discerned; but it is particularly demonstrated by these last sentences. In them the real state of Burr's mind may be clearly seen. They discover a man conscious of having abused the unguarded confidence and misplaced friendship of another, which he was about to lose by the public exposure of his views. They display despondency and regret at the circumstance, and attempt to make a miserable atonement by a renewal of professions. They demonstrate, too, that there was no participation in the conspiracy. In further corroboration of these conclusions, it ought not to escape notice that, on Burr's next visit to Cincinnati, he took lodgings at a tavern, and avoided Mr. Smith's hospitality, which would, doubtless, have been still open to him; he having been more successful in regaining Mr. Smith's confidence by the artful letter written by him, than he had expected. This, I believe to be the plain, obvious, and natural import of this letter. To suppose that it was the effect of a preconcerted arrangement between Burr and Mr. Smith, and intended to disguise the real connexion between them, would be a strained, improbable, unnatural supposition, and, therefore, in my judgment, ought not to be relied upon in any case, but especially not upon a question of guilt or innocence. The postscript of the letter itself furnishes another strong presumption against this conclusion. The next circumstance, in point of time, from which inferences injurious to Mr. Smith are drawn, happened on the 2d or 3d of December, at Frankfort, in Kentucky. At this time and place, Burr was attending on the court upon his second trial. Mr. Smith was drawn thither by business, when a short interview took place between himself and Burr, very immaterial in its objects or consequences. The ground of crimination deduced from this circumstance, is, that Mr. Smith did not voluntarily attend the court as a witness against Burr, and testify to the disclosures which Burr had made to him upon his last visit to Cincinnati. Mr. Smith stated, at the time, his willingness to attend, but believed he knew nothing relevant to the ground of charge against Burr.

The gentleman from Massachusetts differs from Mr. Smith in opinion on this point, and conceives that if Mr. Smith had attended that court, and disclosed what he has since disclosed, in relation to Burr's last communications to him, it would have been sufficient for Burr's conviction. I differ entirely from the gentleman on this point. All that we know relative to Burr's disclosure of his views, at that time, is furnished by Mr. Smith himself. What was disclosed, it would probably be best to take from Mr. Smith's own words:

"The candor discovered in the above recited letter (of October 26, 1806,) inspired my confidence, and when he made his second visit to Cincinnati, in November last, he disclosed his plan fully to my view, as I thought, which added strength to my confidence. He being about to take leave of me, observed: 'Mr. Smith, my object in a few months will be disclosed; you will not find it dishonorable or inimical to this Government. I feel superior to the mean artifices which are ascribed to me; calumniators I do not notice,

for as fast as you put one down, another will rise up. This much I will venture to tell you, if there should be war between the United States and Spain, I shall head a corps of volunteers, and be the first to march into the Mexican provinces; if peace should be preserved, which I do not expect, I shall settle my Washita lands, and make society as pleasant about me as possible. In this Government I have been persecuted, shamefully persecuted, and, I am sorry to say, that in it all private confidence between man and man, seems to be nearly destroyed.' He showed me a deed for a large tract of land on Red river, and said, 'if I would consent to let my sons go thither, he would provide well for them,' to which I gave consent, though I never communicated it to my eldest son until last Saturday, the day on which he returned from Marietta, and not till he expressed a disinclination to co-operate with Colonel Burr's object, till he knew whether it was hostile to the Government of the United States or not. Colonel Burr told me, further, 'that very many of his friends, in different parts of the United States would remove and settle with him, and that he would be the best neighbor this country ever had,' and repeated 'that his object was not hostile to the people of the United States, or dishonorable to himself;' and, further, 'that, in a few months, many of his enemies would be proud to call him their friend.' "

What is here disclosed? Two objects only. The first to settle his Washita lands, the second, in the event of war with Spain, to head a company of volunteers, and be the first to march into Mexico. What was the charge against Burr? A misdemeanor, by beginning and setting on foot, a military expedition or enterprise against a nation with which the United States were at peace, &c. Would this evidence have had any tendency towards supporting this charge? Certainly not. Spain had nothing to do with the settlement of the Washita lands, and with respect to the contemplated military expedition into Mexico, it was to be undertaken only in the event of war, and of course could be no violation of a law which forbids such enterprises, only against nations with which the United States are at peace. The evidence, therefore, could not support the charge; and whether such enterprise in time of war would have been lawful or not, would have depended upon the circumstance of the partisan's acting with or without a commission from the United States, but the gentleman from Massachusetts remarks that this pretended condition, upon which the expedition against Mexico was to be undertaken, was too thin a disguise to impose upon the most credulous or ignorant. I will here admit that I always thought it a very thin disguise; but did everybody think so, and particularly before Burr's other views were disclosed? It is known that many men of the first talents were deceived by this disguise long after this period. It was urged by many as a substantial ground of defence in favor of Burr, during the whole course of his trial at Richmond, and many adhered to it, even after the trial was over. Why is it expected that Mr. Smith particularly ought not to have been the dupe of this disguise at that particular period? It cannot be because he is known to have reposed a blind confidence in Burr. It is probable that Burr's knowledge of that circumstance induced him to suggest the disguise. It is certainly the circumstance which lulled Mr. Smith's suspicions, and made him the dupe of the artifice. It may be said, and truly said, he ought to have been more guarded; it would certainly have been better for Mr. S. to have been a better judge of human nature, and his present condition is sufficient evidence of the misfortune of the want of that knowledge, but it is no evidence of a crime, or of a criminal intent. The only conclusion I draw from this circumstance is, that Mr. Smith furnishes a striking example of a plain dealing, unsuspicious man, involved in irretrievable difficulties from the professions and flatteries of an artful and designing one.

The next observation made upon this part of the evidence disclosed by Mr. S. is, that he consented to let his sons go with Burr, from which a knowledge of Burr's illicit views is inferred. It certainly would be an incorrect application of the rules of evidence to infer an object different from the one disclosed by the evidence, particularly when the one expressed is much more natural and probable than the one inferred. Mr. Smith himself furnishes both the fact and the object. He says, he was induced to consent to his sons going with Burr, from Burr's promises to advance their fortunes by giving them large portions of his Washita lands Was not this a very natural object? What could be more natural or probable than for a father to be influenced by a motive of advancing his son's fortunes? But it is said this conduct discovered too much confidence in Burr, and too much simplicity in Mr. Smith, there must be therefore some other concealed motive for it. It is admitted that none is proved, and I believe none exists. It is perfectly consistent with all the rest of the evidence. It does demonstrate too much confidence and too much simplicity; but it demonstrates nothing else. It demonstrates no crime. It does not demonstrate any participation in the conspiracy of Aaron Burr. We have now passed through these scenes of inferences and suspicions, and arrived at the 14th of December, 1806. The gentleman from Massachusetts, with his usual candor, here states, that from this time Mr. Smith's conduct became exemplary, from this date every effort on his part was made to defeat the conspiracy; he contributed his full quota of exertion for that purpose, and succeeded. How can this laudable conduct be reconciled with the inferences of guilt made against him? Why, sir, another inference more preposterous than any other, is brought up to support all the former inferences, in my judgment sufficiently preposterous and improbable in themselves. It is said that this laudable exertion to suppress the conspiracy by Mr. Smith was intended as a cover to his former misconduct. But certainly, sir, before this inference is drawn, the former misconduct ought to be proved. It ought not to be made evidence of the misconduct itself. It certainly cannot be a correct rule of evidence to infer a wrong motive from a right action. But sir, this inference is made against every rule of

probability. It is not probable that if the conspiracy should be suppressed by Mr. Smith's exertions in common with others, that such suppression would cover his own misconduct. It would have been the most effectual mode of detecting and exposing it. What hope could Mr. Smith have indulged, that if he had been engaged in the conspiracy, and had turned traitor to the rest by exerting himself in its suppression, that he would have been exempted from exposure? Would not such conduct have tended to excite the resentment of the other conspirators against him, and to call forth from them every exertion to expose him? This conduct was placing them at defiance, and in my judgment, is one of the strongest circumstances of his innocence. It was not at all calculated to cover his participation, and it appears to me absurd to conclude that it was resorted to for that purpose. But, sir, look at Mr. Smith's disclosure to the Secretary of War at this period. At this time he could not have anticipated any prosecution against himself. It was the day after the receipt of the President's proclamation. At that time he communicates to the Secretary of War all the communications made by Burr to him at any previous time, confirmed in every respect by the evidence of General Gano. I believe he did it with candor, and then he makes the following natural and correct observations, after having stated that Burr had deceived him with his apparent candor, that he had before believed Burr's views to be honorable, he remarks: "From the proclamation of the President, I am induced to believe that he is possessed of much more information than has come under my notice, and therefore the utmost attention will be paid to it, as the people here are universally (almost) well disposed to the Government, &c."

Upon the supposition that Mr. Smith is innocent, this conduct is natural and its object obvious. Upon the supposition of his guilt, it is unaccountable, and would have been without a rational object. I cannot, therefore, infer guilt against all the probabilities of innocence. I have now gone through all the evidence which has been deemed by the gentleman from Massachusetts the most material against Mr. Smith. I have omitted many circumstances both in the papers formerly before the Senate, and those now presented by Mr. Smith's counsel, tending further to demonstrate his innocence; to these I merely request the attention and recollection of the Senate. It has not been my object to dilate on them, but merely to state the reasons on my mind why the conviction of Mr. Smith's guilt was not produced on it, which has been on the gentleman's from Massachusetts. This has been done by the best consideration of those parts of the evidence, which he so ably and eloquently selected and presented to our view; of course the worst part of the picture has been constantly before us. Upon a candid review of all the circumstances, to what do they amount? To suspicions, and suspicions only—suspicions unnatural and improbable. Has a single act of participation in Burr's conspiracy been proved? Not to my discernment. Has any been suggested to have been proved? I have heard of none. If any criminal act has been committed, why do not gentlemen tell us what it is—in what it consists? Why do they not put their finger upon it? I call upon gentlemen, I challenge them to do it. That at least must be done, before I can convict the accused of guilt.

I have already extended my observations much further than I originally intended; but I am still impelled, by an indescribable and irresistible impulse, to make a few more general observations. They are impelled by impressions resulting from a view of the general complexion of the case under consideration. The conspiracy of Aaron Burr has been so mysterious, complicated, and extensive, that the patriotic mind has been left in great doubt and uncertainty in fixing on the objects connected with it. The wickedness, and dangerous tendency of his plans, have excited a just and general detestation and indignation against the author, and all his associates. This state of feeling opens the mind to jealousies and suspicions; and the transition of this feeling is extremely easy and natural from the author, and his known associates, to persons who are merely objects of these jealousies and suspicions. This happens to be the unfortunate lot of all, who ever happened to repose a mistaken confidence in Burr. That this is the peculiar misfortune of Mr. Smith, at the present moment, can any gentleman doubt, who will take an impartial review of the whole evidence and proceedings in the case? When we see gentlemen of the most discerning minds, and the most amiable and merciful dispositions on all other occasions, with the best intentions, in this distort the rules of evidence, and resort to trivial, inconsistent, and unnatural incidents, as evidences of guilt, without pretending to name or describe in what the criminal act consists; how can the phenomenon be accounted for but from the influence of this patriotic, but misguided sensibility? I really fear, that this laudable but dangerous sensibility has too much influence on the Senate at this moment for the purposes of justice and of truth. In this state of mind, sir, it peculiarly becomes the justice and circumspection of the Senate to guard against the influence of trivial incidents and suspicious circumstances. We ought to recollect the peculiar force and applicability of the quotation of the gentleman from Connecticut (Mr. HILLHOUSE:)

> "———Trifles, light as air,
> Are, to the jealous, confirmations strong
> As proofs of holy writ."

We ought to recollect that the question before us is not as to the existence, the extent, or the wickedness of Burr's plans; but whether Mr. Smith participated in them or not. No gentleman feels more detestation for the conspiracy than myself, nor would do more to detect and punish its author and all his associates; but I should revolt at the idea of an indiscriminate punishment, involving both innocent and guilty; and how can the just discrimination be made, but by evidence? Evidence interpreted by rules long settled and ap-

proved. Ought not the Senate to be particularly circumspect, lest, by departing therefrom, innocence might become the victim of an incautious sensibility? Again, sir, the popular feeling and opinion are known to be directed with peculiar earnestness and force against all the participators in this abominable conspiracy; and particularly against Mr. Smith, upon the presumption of his being one of them. Is it not to be feared, sir, that this circumstance has given an importance to some of the incidents relied upon against him, which they do not merit, when tested by the ordinary rules of evidence? Under these circumstances are not Mr. Smith's chances for justice, *for sheer justice*, materially lessened? Does it not require more than an usual effort of the mind to incur the responsibility attached to the attestation of his innocence? It certainly does, sir; I am now acting with a full knowledge and under a deep impression of that responsibility. But, sir, when the alternative is presented whether I shall incur the responsibility, or violate my conscience, by acting against my conviction of right, I cannot hesitate a moment in the choice to be made. I must follow the honest conviction of my own judgment, and although that may be and probably is a fallible standard; it is the best that God and nature have bestowed on me, and it shall be implicitly and sacredly obeyed under any circumstances, in which it is possible to place me. I know too that the people of the United States are just and liberal, and that they themselves would regret that the innocent should be numbered with the guilty by too complaisant a respect for their feelings; particularly when they reflect, that in this particular case, they have not the whole evidence before them, and of course cannot form the most accurate estimate of its bearings and effects. Gentlemen, sir, have thought proper to make professions of their impressions in Mr. Smith's favor, until he was accused; to obviate, I presume, the idea of their being influenced by any feelings personally hostile to him. I verily believe they are not. I readily admit that if feelings have been too much intermingled in this inquiry, they have been of a public and not of a personal nature. I have not been much in the habit of appealing to the motives which actuate my public conduct. I have been willing that it should be the test of its own responsibility—it is the only criterion by which I ever wish to be judged. But upon this occasion I might observe, that my prepossessions in relation to Mr. Smith have not been of the character described by others. The circumstance of his becoming a public contractor whilst Senator, opened my mind much more to suspicion, than it would otherwise have been. It is also known that his general course of political conduct was not such as I generally approved. My prepossessions therefore were not favorable to Mr. Smith; and if I had contented myself to act under their influence, there is no doubt as to the course I should now take, but I felt myself imperiously called upon to act under a more sacred influence; a sacred obligation to truth and justice. I have conscientiously obeyed it; and the result is, a conviction that Mr. Smith is not guilty of the crime imputed to him; I shall therefore disregard these prepossessions. Again, sir, are we not to look at the effects of the sentence we are called upon to pronounce? If the effects of the sentence were merely to deprive Mr. Smith of his seat in this Senate, it would be a matter of little moment. Gentlemen often voluntarily deprive themselves of that honor, but if we compulsively deprive Mr. Smith of his seat, we disrobe him also of his reputation and his honor. The effects of the sentence will not stop here; it will have an unavoidable influence on the standing and character of his family. Are we to be told, sir, that our feelings respecting his family are to be blunted, and that we must give a loose to our suspicions and jealousies against him alone? Are we to be told that his own former good character must not be brought into consideration, to counteract the inferences from trivial incidents, surmises, and suspicions? When has it been, sir, that in questions of guilt or innocence, former good character has been excluded from all consideration in weighing circumstances? Why was it that Colonel Taylor reminded us that Mr. Smith was always esteemed "a friendly, worthy, and benevolent man," and his family amiable and respectable? It was, sir, from a conscientiousness in him that those circumstances were important, and ought to be taken into serious consideration in forming a correct estimate of circumstances related by himself. Against positive evidence, I admit that the circumstance ought not to be regarded, although it would afford matter of serious regret; but against episodes, questionable incidents, surmises, and suspicions, it ought to be weighed; and if weighed in the scales of justice, would outweigh them altogether. What was it which has entitled Colonel Taylor's testimony to the peculiar character of candor and circumspection? It was his voluntarily mentioning this circumstance more than any other? And are the Senate about to disrespect the very caution and admonition which has called forth in his favor so much of their just applause? We are bound, sir, by every principle of justice and propriety to reflect, impartially to reflect upon the awful effects of the sentence we are called upon to pronounce. We ought to reflect that Mr. Smith himself is an object of suspicion merely, not of ascertained guilt—that his family is amiable, innocent, and not suspected; we ought deeply to reflect, that the blow meditated against merely suspected guilt, will necessarily strike deep into the bosom of amiable and unsuspected innocence. If, in the opinions I have expressed, and the vote I am about to give upon this occasion, I shall disappoint the expectations of my friends in this body, gentlemen whose friendship I highly value, and whose opinions I highly respect; if I shall disappoint the expectations of the people at large; if, indeed, I shall disappoint my own original expectations and feelings, I shall enjoy the pleasing consolation of reflecting that I have been influenced solely by an honest conviction, produced by the best attention I was able to bestow on the subject. It will be some consolation also to me, to reflect, that I am giving one strong instance of de-

monstration to the world, that I set too high a value upon the reputation and honor of a fellow-citizen, to sacrifice them upon the unhallowed altars of prejudice, suspicion, expediency, or popularity, under any circumstances, however imperious and responsible. If a single act of participation in Burr's conspiracy had been proved against Mr. Smith, I would not hesitate to pronounce him guilty, although it would be in obedience to a painful and reluctant duty; but to pronounce him guilty of that abominable crime, when I believe him innocent, is an operation too harsh for my mind to perform. It revolts at the very suggestion. No consideration on earth could induce me to make the assertion.

Mr. ANDERSON said, when he moved the postponement of this business, the day before yesterday, it was from a desire to collate the testimony; which, having done, he was prepared to vote when he first took his seat this morning, and had not intended to have taken any part in the discussion of the subject. But, seeing that almost all the strong points of circumstantial testimony had been either overlooked or not duly appreciated by the gentlemen (Mr. HILLHOUSE and Mr. GILES) who had spoken against the adoption of the resolution, and who had, withal, entered with great warmth into the discussion, he felt himself bound, as a member of the committee to whom the case of Mr. Smith had been referred, to examine some of the prominent parts of the evidence, and to present it impartially to the view of the Senate. Mr. A. said, in the course of his examination of the evidence, he should not, as the gentleman who preceded him had done, entirely discard the testimony of Elias Glover, but should make that testimony, in its proper place, a part of the ground-work of his observations, and support it by Mr. Smith's own affidavit, and his admission of parts of it in his answer to the committee. Mr. A. said in order to have a correct view of the case, it would be necessary to recite sundry parts of the testimony—as, by combining and comparing it alone, could the subject be clearly understood—and he would begin with the evidence of Peter Taylor, (as being the first in order,) who states that in the month of October, 1806, he was sent, by Mrs. Blannerhasset, to Lexington, after Mr. Blannerhasset, with a letter, to prevent Colonel Burr from coming back with him to the island. That he was ordered to call at Mr. John Smith's. That he called at Mr. Smith's store and asked for him. When he came out, Taylor inquired for Colonel Burr, and Blannerhasset. Mr. Smith said he knew nothing of either of them. That he, Taylor, must be mistaken as to the place where he was to inquire. Taylor said he was right. That he was directed to inquire for John Smith, storekeeper, Cincinnati; and asked Mr. Smith if he did not recollect a young man that had come for Colonel Burr's top coat, (great coat,) and informed Mr. Smith he had lived with Mr. Blannerhasset three years? He says, that, when Mr. Smith heard him talk so, he took him up stairs and asked him the news. Wanted to know what was passing; what was said about General Wilkinson; and if he, Taylor, would carry a letter from him to Blannerhasset; which he agreed to. Mr. Smith then informed Taylor that he would find Burr and Blannerhasset at the house of a Mr. Jordan, at Lexington, where he found Mr. Burr, who, among other inquiries, asked what letters he had? Taylor replied he had two; one from Mrs. Blannerhasset, and one from John Smith, of Cincinnati. The letter from John Smith, Mr. Burr allowed, was for him, (it was directed to Blannerhasset,) but on Mr. Burr's opening it, he found it contained a letter for him. Having recited some parts of the testimony of Peter Taylor, I shall proceed to make some observations thereon. And here let me premise, that the general character of Peter Taylor has, heretofore, stood the test of the strictest scrutiny at Richmond; and, on a recent inquiry into his veracity, and general character, the counsel of Mr. Smith has found both so well sustained, that they have not, in the course of their arguments, attempted to invalidate it, but have contented themselves with pointing out some small mistakes, that have not, in the least degree, lessened the validity of his testimony. With this fair character, then, does Peter Taylor stand before you, and his testimony must receive that portion of credit which is due to established integrity. But, notwithstanding the credit of this witness, thus established, Mr. Smith, in his answer to the committee, denies almost everything that has been sworn to by Peter Taylor. We must then believe, either that Peter Taylor, with all his fairness of character, and totally disinterested, has sworn false respecting the conversation with Mr. Smith, or that Mr. Smith, in his answer to the committee, must have denied what he knew to be true. Which are we to believe? I shall make no comment. Every member of the Senate can form as correct an opinion for himself upon this subject, as I could possibly express. Let us now examine what the testimony of Peter Taylor amounts to against Mr. Smith. Taken by itself, although it may excite strong suspicion, perhaps no great criminality could attach to it; but, combine it with many other circumstances, and it wears a different aspect. I pass over the extraordinary conversation between Mr. Smith and Peter Taylor, and come to the question asked by Mr. Smith. What was said about General Wilkinson? Why is the name of General Wilkinson introduced by Mr. Smith? The Senate will recollect, that, in the deciphered letter, written by Colonel Burr to General Wilkinson, which was read yesterday by the honorable chairman of the committee, (Mr. ADAMS,) Colonel Burr tells General Wilkinson that the contractor will supply provisions, to be sent to such points as Wilkinson shall direct. Mr. Smith is the contractor for supplying the army; and a strong inference would here arise that he was the person meant by the term contractor; hence his question—What is said about General Wilkinson? And this question, asked under the peculiar circumstances which here present themselves, implies a knowledge of Colonel Burr's plans, which are developed by the

communication General Wilkinson made to the President, of the contents of the deciphered letter. Add to these considerations, Mr. Smith's first denying to Taylor that he knew anything about Burr or Blannerhasset, and shortly after, when he found Taylor was a domestic of Blannerhasset's, he directed Taylor to the house in Lexington, where he would find Colonel Burr; and they certainly excite a strong impression that Mr. Smith had a knowledge of Colonel Burr's plans and movements. It will be recollected that Mr. Smith asked Taylor to carry a letter from him to Blannerhasset; but, from the testimony of Taylor, it appears that the letter was for Colonel Burr. The contents of this letter, and the answer thereto, are presented to us, and from them, arguments have been drawn to prove that Mr. Smith is entirely innocent. But the very able elucidation which had been given of those letters by the honorable chairman of the committee, (Mr. ADAMS,) has not, I expect, left a very strong impression of the innocence of Mr. Smith, either with respect to the tenor of the correspondence, or the object of it. A very different construction has, however, been attempted to be given to the contents of this letter, and the answer thereto, by the gentleman from Virginia, (Mr. GILES.) Which will best comport with the whole train of Mr. Smith's conduct in relation to Colonel Burr's plans, the Senate will determine.

I shall now proceed to examine the testimony of Elias Glover, and I think I can show, that Mr. Smith's own affidavit does most fully support some of the most material parts of it; and it is worthy of remark, that Mr. Smith, in his answer to the committee, admits more of the facts sworn to by Elias Glover, notwithstanding the very bad character Mr. Smith gives him, than he admits of the facts stated in Peter Taylor's deposition, whose character with all the pains that have been taken to invalidate it, yet remains untarnished. For this extraordinary procedure it may be necessary to account. With respect to Peter Taylor, it will be recollected, Mr. Smith had never admitted the material parts of the conversation as stated by Taylor to have taken place. That Taylor's weight of testimony of course depended on his own character, and Mr. Smith in his affidavit presented to the Senate, says, that he can prove the falsehood of the statement of this witness. Thus was this man's testimony to be positively disproved, which however has failed. But Glover's could not be completely prostrated in the same way, because Mr. Smith had on his oath admitted sundry of the facts stated by Glover, and that at a time when Mr. Smith hardly calculated upon being arraigned before the Senate under the present charge. It therefore became necessary that Glover's general character should be so completely destroyed by positive swearing, as to disprove, if possible, even the very facts which are fully corroborated by Mr. Smith's own admission on oath. But, Mr. President, when I look around, and observe that many of this body, either on the bench or at the bar, have been much accustomed to compare positive swearing with strong circumstantial testimony, I have not a doubt, but that each of those different kinds of evidence will be duly and deliberately estimated. I will now proceed to state some of the material parts of Elias Glover's testimony, and will afterwards compare those parts with Mr. Smith's own affidavit. In Glover's deposition he states that on the 23d November he, in company with a friend, (this friend appears to be William McFarland,) went to Mr. Smith's, and had a conversation with him, in which Mr. S. stated that Mr. Burr had disclosed to him his object, which he had never fully done before—which was, in the first place, should a war take place between the United States and Spain, to head a corps of volunteers, and march into the Mexican provinces; a great number of enterprising young men were engaged for that purpose—that his preparations on the western waters were extensive—that the plan had been long maturing, and expressed a full confidence in Colonel Burr's success. Mr. Smith said, that his sons were going to Orleans in a few days, and that he had consented that Colonel Burr should there take them into his charge; he having assured him, that he, Burr, would provide well for them—he also said, that Burr wanted the gunboats he was then building. Mr. S. said he had not been well treated about the boats he had before built. Mr. S. in his deposition sent to the President, some time after the proclamation issued, states that when Burr made his second visit to Cincinnati, in November, 1806, he disclosed his plan fully to him as he thought. Being about to take his leave, he said, Mr. Smith, my object in a few months will be known, you will not find it dishonorable or inimical to this Government. Thus much I will venture to tell you, if there should be a war between the United States and Spain, I shall head a corps of volunteers, and be the first to march into the Mexican provinces. In this statement of Mr. Smith, he fully confirms the deposition of Glover; and he also admits that he agreed to let his sons go with Colonel Burr. This is another very important point, which goes to support the testimony of Glover. For how could Glover have known this fact, but from Mr. Smith himself—for Mr. S. seems to have been so cautious about communicating it, that from his own affidavit made the 6th January, 1807, he swears that he never communicated it to his eldest son, until the Saturday preceding the 6th January. There is one point of some importance, which Mr. S. though virtually, does not absolutely deny, but evidently intends to deny it in his answer to the committee. It is that part of Glover's testimony respecting the gunboats, which is supported by the letter of the Accountant of the Navy in answer to one from the Chairman of the committee. The accountant says, that Mr. Smith had previous to November, 1806, built two gunboats for the United States, and that from some change in the plan, there arose a difficulty in fixing a proper valuation. Glover says, Mr. Smith told him he had not been well treated about them at Washington. I would ask how could Glover ever have known that there had been the smallest

difficulty about Mr. Smith's gunboats which he built for Government, if Mr. S. himself had not communicated it. There is no great criminality in this communication, but it certainly tends to prove substantially the conversation between Mr. Glover and Mr. Smith. Thus, I conceive, have several important and material parts of the testimony of Elias Glover been supported, and so far as circumstantial testimony can tend to establish facts, in the deposition of Glover entitled to credit.

It has been attempted to be shown, that Glover was a bitter enemy of Mr. Smith, and affidavits to that effect have been produced, from which it is inferred that no kind of communication whatever could, or had, taken place between them. In the deposition of General Gano, it is stated that, in the Summer of 1806, Mr. Glover did, in an electioneering conversation, make use of harsh epithets respecting Mr. Smith. But from the deposition of Mr. Carr, at whose house Mr. Glover boarded, it appears that Mr. S. did visit Mr. G. at his lodgings, and that he saw them engaged in private conversation in the Fall of 1806.

Mr. Dugan, who is stated to be a merchant at Cincinnati, deposeth that he boarded in the same house with Mr. Glover, in the Fall of 1806; that he has seen Mr. Smith going to Glover's lodgings, at the dusk of evening, and that Mrs. Carr, the landlady frequently expressed herself in the following terms: "I wonder what brings Mr. Smith so often to this house after dark, and causes him to stay so long in Mr. Glover's room?" or words to that effect. Now, if we believe these witnesses, and we have no reason to doubt their veracity, there certainly must have been a very good and intimate understanding, between Mr. Smith and Mr. Glover, in the Fall of 1806, and this will account for Mr. Smith's free communication to Mr. Glover, and the deposition of William McFarland proves the conversation between Mr. S. and Mr. G. to be substantially correct, and as Mr. Smith has fully proved that Glover and McFarland were both concerned in Burr's plans, it will remain with the Senate to say whether it has not also been proved that Mr. Smith was likewise concerned. I shall take a very short view of Mr. Smith's journey to Frankfort, at the time he saw Col. Burr there, shortly after the conversation which has been stated to have taken place at Mr. Smith's own house, with Glover and McFarland. Some business led Mr. S. to Lexington, where he was informed by a Mr. Jordan, that if it was known he (Smith) was there, he would be summoned as a witness against Colonel Burr, who it was said was at that time arraigned at Frankfort. Mr. S. said that he was willing, and that he knew nothing of the business. A similar conversation passed between Mr. S. and a Mr. Kelly, by which it appears that Mr. Smith did go to Frankfort on his own business; that for want of General Adair, Mr. Burr's trial before the grand jury was delayed; but Mr. Smith said, he could not be detained at Frankfort from his business, particularly as he knew nothing that would either criminate or exculpate Colonel Burr. Thus we see Mr. Smith denying any knowledge whatever of Col. Burr's plans, although he had acknowledged that Colonel Burr had disclosed his views to him; and the charge then against Colonel Burr was, an intention to invade the Spanish provinces. Mr. Smith's testimony, had it been given, would certainly have thrown much light on the subject, and might have put a complete stop to all the future consequences which created so much agitation throughout every part of the continent.

In about ten days after this affair happened, on the evening of the sixteenth December, Mr. Smith told Mr. Token, as appears by his deposition, that he never believed Colonel Burr to be engaged in hostility against the United States, until he saw the President's proclamation. Until then he believed, as we had been in expectation of a war with Spain, that if Colonel Burr was engaged in any enterprise, it was under the protection, and with the advice of, our Government. About the same time Mr. Smith makes a similar communication to Mr. Gano, who inquired of him if he was acquainted with Burr's designs and mysterious movements in the Western country. Mr. Smith said he had endeavored to find out, but could not, further than they were honorable, and would be approved by the United States; that he was going to settle his Washita lands, and would, if a war should take place between Spain and the United States, be ready to embark in it, and that many who were now his enemies, would then be glad to call him their friend. Major Riddle states that he had the command of the militia that were called out to stop Burr's boats; that he was stationed near Mr. Smith's house, and had instructions from his superior officer to try to find out whether Mr. S. knew anything of Burr's affairs, and what he knew; and that, in one of the conversations had with him, Mr. S. said he knew more of Burr's concerns than any man in the State of Ohio, but one. Those various declarations thus made by Mr. S. at several different times, and under different circumstances, appear to be entirely inconsistent with one another. We see by the testimony of Jordan and Kelly, that Mr. Smith declared that he knew nothing about Mr. Burr's business, and nothing that could criminate or exculpate him. We have seen what Glover stated of what Mr. Smith communicated to him; we have seen that statement confirmed by Mr. Smith's own affidavit, sent to the President, and we now see what Mr. S. has declared to Mr. Token and Mr. Gano; to the former he says, that if Burr was engaged in any enterprise, it was under the protection, and with the advice, of our Government; this was the very language Mr. Burr himself held out to induce the unwary and unsuspecting to join him. To Mr. Gano, Mr. Smith says, he had endeavored to find out Burr's plans, but could not, further than that they were honorable, and would be approved by the United States; and to Major Riddle, he says, he knew more of Burr's plans than any man in the State of Ohio, but one. These three last conversations took place about ten days after Mr. Smith had declared to Jordan and Kelly, that he knew nothing of Burr's business, or anything that could

criminate or exculpate him. How are these various declarations of Mr. S. to be reconciled? At one time, he says, he knows nothing of Burr's affairs; ten days after, he says, he knew more of his concerns than any man in the State of Ohio, but one; and goes so far as to say, that if Burr was engaged in any enterprise, it was under the protection, and with the advice, of our Government; and all this after Mr. Burr had told him that he had been persecuted in this Government, shamefully persecuted, and that, in it, all private confidence between man and man seemed to be nearly destroyed Could, or did, Mr. Smith believe that the Government countenanced any of the plans of Mr. Burr? It appears to me impossible. What, then, could induce him to make such a declaration, and at different times? Did Mr. S. believe that the Government would give its sanction to an illegal act? For, as a member of the National Legislature, he must have known that it was not authorized by law, and that the President would not dare, in violation of the Constitution, (even if he had ever so great an inclination,) to countenance an enterprise that would inevitably involve our country in war? And did Mr. S. believe that the Administration had such unbounded confidence in Mr. Burr as to entrust him with so important an expedition at that critical period? Yet these things we must believe, if we believe Mr. Smith sincere in his declaration; and if we do believe him sincere in saying that if Mr. Burr was engaged in any enterprise, it was under the protection, and with the advice, of our Government, we must believe that he was conversant with Mr. Burr's plans, which must have been very plausibly impressed upon him indeed, to have induced him to have formed so extraordinary an opinion.

I shall now proceed to the testimony of Colonel James Taylor, who, in answer to a question put by the committee, makes the following statement: "That a piece signed Querist, published at Mari-'etta, in the Fall of 1806, excited a good deal of 'agitation at Cincinnati; that he was anxious to 'see the piece, and expressed himself to this effect 'to Mr. John Smith, of that place. Mr. S. prom-'ised to procure the paper, which he did. In a 'few days after, Colonel Taylor fell in company 'with Mr. Smith and General Findley, in Cincin-'nati, when the conversation turned upon the 'subject of a separation of the Union. Mr. S. 'advanced, as his opinion, many of the arguments 'in the Querist; spoke as to the difference of in-'terest between the Western and Atlantic States; 'and observed, that, although the doctrine was 'unpleasant at that time, in less than two years, 'it would become orthodox." Mr. Taylor says, one of the arguments made use of was, that we derived very little advantage from the great expense of foreign Ministers and Consuls, and the Navy. He observed, that a few British ships or armed vessels, at the mouth of the Mississippi, could block up our trade effectually. This conversation, abstractly considered, (though peculiarly improper in a Senator or member of the National Government,) might not of itself be considered criminal; but combine it with Colonel Burr's conversation with General Morgan and his sons, as stated in their depositions, to the very same purport; add thereto the time at which the piece signed Querist was published, which was immediately on Colonel Burr's arriving in that country; supporting the same doctrine, and considering the separation of the Union as a part of Colonel Burr's great plan, and connect this communication of Mr. Smith's with the several conversations hereinbefore detailed, and the information which Mr. Smith himself acknowledges to have received from Colonel Burr; and it appears to me almost impossible not to believe that Mr. S. was concerned in Burr's projects. Some attempt has been made by Mr. S. to explain away or invalidate the testimony of Colonel Taylor; but the stern integrity of his character is such, blended with the very candid manner, the great reluctance with which he gave in his evidence before the committee; the extreme tenderness he evinced towards Mr. Smith and his family, were so conspicuous, that the evidence which has been presented to countervail the effect of Colonel Taylor's testimony, has not made the smallest impression upon my mind; and the very circumstance of Mr. Smith not obtaining the deposition of Gen. Findley, who, Colonel Taylor says, was present, confirms me in the belief, that if that testimony was produced, it would fully accord with Colonel Taylor's. I have now discharged my duty as a member of the Committee, and whatever may be the determination of the Senate, I shall rest satisfied. The duty that the Committee had assigned them, in the case of Mr. Smith, has been an extremely unpleasant one; but they have deemed it their duty, uninfluenced by personal feeling or public opinion, to observe an undeviating course, and to endeavor to bring fairly and fully to the view of the Senate, the whole merits of the case; upon which I am constrained to pronounce, however painfully, that, in my opinion, the resolution ought to be adopted.

Mr. POPE.—It is with reluctance that I rise at so late an hour to express the reasons which will influence my vote. The very able and luminous view which my honorable friend from Virginia has taken of this subject, will supersede the necessity of many additional remarks from me.

The counsel of Mr. Smith have opposed the resolution on two grounds. First, that the Senate have no jurisdiction in the case; second, that the evidence does not warrant its adoption. Although I have dissented, and still dissent from the opinion of other gentlemen in their application of some of the principles laid down in the report of the committee, I concur with them, on the general ground of jurisdiction. Their arguments on this point were very plausible and ingenious. They have contended that the Senate has no power to inquire into any offence of which one of its members may be accused, that is cognizable in a civil court of criminal jurisdiction. Every man is equally amenable to the general laws of the land, and liable to be prosecuted and punished in the

civil courts; but when a man is clothed with a legislative character, he is placed in a new relation; and, besides being amenable to the judicial tribunals of his country, he becomes, to a certain extent, responsible for his conduct to that body to which he belongs; and that body has a power to inquire into it, without the aid of a civil court. Whenever a member of this House shall be charged with a crime punishable by the general laws of the country, it may be a question worthy of consideration, whether to refer it to the civil court, or to have it examined before this body. On this question, the reasoning of the counsel, when addressed to the sound discretion of the Senate, would merit attention. If, however, the Senate should deem it necessary or expedient to make the inquiry, I entertain no doubt of its power to do so.

I will add nothing more on the subject of jurisdiction, but proceed to consider whether the resolution is supported by the evidence before us. The gentlemen for and against the resolution who have preceded me, seem to consider Glover discredited, and in their arguments, have laid his affidavit entirely out of the case. I shall not inquire into the credibility of this witness, after the solemn protest I have so often made against the us of ex parte testimony, either to criminate the accused, or to impeach the characters or credibility of the witnesses; the Senate must be satisfied that I should be very unwilling to bottom my vote on such testimony. My mind revolts at the idea of pronouncing a man guilty of an infamous crime upon a private ex parte affidavit, especially of a private conversation, so liable to be misunderstood, and so impossible to be disproved. The precedent would be a monstrous one, and the first, I believe, known in this country. I cannot give my vote to sanction it. We are called upon to declare to this nation, that Mr. Smith has been guilty of participating in the conspiracy of Aaron Burr against the peace, liberties, and union, of the people of these States. To authorize us to pronounce the sentence, one of two things ought to appear; either that he has committed some treasonable act, or that Burr's treasonable project was disclosed to him; and that he connived at, or improperly concealed, it; for, I presume, it will be conceded that it should appear that Mr. Smith has been guilty of some act of a treasonable nature. Glover was the important witness against Mr. Smith before the grand jury at Richmond, and his testimony has been deemed very material during the present investigation. If his affidavit is abandoned, I would thank some gentleman to specify the evidence which proves Mr. Smith guilty of committing or concealing anything treasonable. We are told, however, that, although no particular part of the evidence, or no single link in the chain proves his guilt, yet the whole circumstances combined make it sufficiently manifest. I must confess, that many circumstances, which do not appear to have any necessary connexion with each other, have been put together with great ingenuity, and from them strong inferences drawn unfavorable to Mr. Smith. After exhibiting this chain in its most plausible and imposing attitude, I believe gentlemen will be at a loss to inform us what is the result, or what particular part, if any, it proves Mr. Smith has performed in this conspiracy of Burr. My friend from Virginia has well explained the circumstances stated by Peter Taylor. Peter Taylor may be mistaken in some of the circumstances, but, admitting the whole to be true, there is nothing incompatible with innocence. It is evident that Mrs. Blannerhasset's sending Peter Taylor the letter from Smith to Burr, and Burr's answer, were not the result of any previous concert, but grew out of the circumstances of the moment. The conversation, mentioned by Colonel Taylor, has been much relied on. I have, from personal acquaintance, as well as from character, too much confidence in the honor and veracity of Colonel Taylor, to suspect, for a moment, that he would intentionally misrepresent; but if the testimony of Doctor Sellman is to be regarded, we might be induced to suppose it possible that Colonel Taylor, either did not apprehend Mr. Smith's meaning correctly, or that he did not hear the whole of his observations. I am not, however, convinced that Colonel Taylor has been mistaken. I disapprove, very much, the dissemination of such sentiments; it tends to weaken the bond of Union, but it cannot, surely, be deemed an infamous or criminal act, which will constitute a ground of expulsion. It is worthy of remark, that almost the whole of the testimony against Mr. Smith relates to conversations; a species of testimony which should be received with great caution. I beg leave to remind gentlemen of some circumstances which have occurred in this city during the present session. Conversations, which have been repeated on the same or the day after they took place, have been understood, and represented differently, by different gentlemen who were present. The gentlemen who have advocated the expulsion of Mr. Smith, have relied principally on Mr. Smith's own statements. If Mr. Smith's explanation of his own conduct is to be resorted to, the whole should be taken together. It would be very unfair to garble it. However improper or dangerous it may be considered, to permit a man to prepare the means of a military expedition against a foreign Government, without the authority of his own, Mr. Smith's explanation in his answer, his conduct and declarations, after the President's proclamation arrived at Cincinnati, his letter to the Secretary of War, of the 14th of December, 1806, afford a strong presumption that he had no criminal intentions. In his letter to the Secretary of War, he stated that, about two weeks before he had called on Burr, then at Cincinnati, and requested to know his object; Burr answered that, in the event of war with Spain, which he deemed inevitable, he would head a corps of volunteers, and march into Mexico; but if peace should be preserved, which he did not expect, he would make a settlement of lands. This was the only disclosure, if it may be called one, which it appears was ever made to him, and this he communicated to the Government two weeks after he received it; but observes, in his letter, that Burr

had expressed himself, with apparent frankness and candor, that he could not believe that he was engaged in any criminal project. Inasmuch, however, as the President had issued his proclamation, he presumed he must have more information than himself, and considered it his duty to enforce it.

All parties about Cincinnati seem to agree that Mr. Smith was one of the most active and efficient men in arresting the progress of the expedition. He procured the public arms on his own responsibility, and put them in the hands of the militia. It has been said that he pursued this course to blind the people, and not from patriotic motives; this is uncharitable indeed. If Mr. Smith had disregarded the warning of the President and discountenanced an attempt to stop the expedition, such conduct would have been relied on as very strong evidence of his connexion with Burr; so, that, whether he was active or passive, his conduct, after suspicion had alighted upon him, would have been equal evidence of his guilt. Whatever may have been Mr. Smith's confidence in Burr previous to the arrival of the proclamation, it is evident that he abandoned him the moment he was denounced by the Government. If it be true, as has been alleged, that Mr. Glover was a partisan of Burr's, it is strange, if Mr. Smith was also concerned, that Mr. Smith and Mr. Glover should have conducted themselves so differently after the arrival of the proclamation; and it appears to me very extraordinary that Mr. Glover, if he had been initiated into the secrets of Mr. Burr's projects, should, in his communications to the Government, have implicated no person except Mr. Smith, who had been so active in defeating them. Can it be seriously contended that Mr. Smith's hospitality to Burr and his confidence in him is evidence of his criminal participation? Surely not. If such circumstances are deemed sufficient to prove a man a traitor to his country, hundreds of innocent persons might be implicated. When Mr. Burr was in the Western country in the Fall of 1806, I thought, and still think, that the charges made against him in the public prints, and in court by the attorney of the United States, if not sufficient to convict him of crime, ought at least to have put us on our guard, and I considered any attempt under these circumstances to give eclat, or to turn public opinion in his favor, imprudent and improper; but, sir, I should not feel myself authorized to pronounce every man a traitor, who treated Mr. Burr with respect, before the President's proclamation reached that country. The gentleman from Tennessee has contended that we ought not to require the same evidence that would be requisite to convict a man of treason before a petit jury. No position, received in the light in which this appears to have been considered by many during the present investigation, is more fallacious or dangerous; that we are not bound by the forms or technicalities of the law, I admit; but I contend, with confidence, that the Senate of the United States, when called upon to declare the existence of a fact, are as much bound by justice and conscience to require proof of it, as any other tribunal. A court and jury would not perhaps require the proof to be as clear and conclusive in a case where the sum of twenty pounds only was in dispute, as in a case of life and death; and it may be said, with at least some plausibility, that we ought not to be as scrupulous on the present occasion, where reputation only is involved, as if life was at stake. The difference consists, not in the tribunals which decide, but the importance of the questions to be decided. In every case where a fact is in question, the triers or judges ought to require convincing evidence of it before they assert it. It has been said that if odium or suspicion has attached to a man's character, he ought to be expelled. This ground, if tenable, cannot be relied on in the present state of this question. If this was a proper ground of expulsion, we should have expelled Mr. Smith when he first presented himself here in November last, on account of the odium which had attached to his character by the finding of the indictments at Richmond; but this ground was abandoned. It was decided by this Senate that Mr. Smith was entitled, on the principles of justice, to an opportunity of controverting the charges against him before he should be banished from this House. We have proceeded to inquire into the fact. The question now to be decided is not, whether he is a suspicious character, but whether he is proved by the evidence before us to be guilty of crime. I cannot act upon suspicion, or mere conjecture. I will not bottom my vote upon anything which does not present itself in the shape of substantial evidence. Were I a citizen of the State of Ohio, mere suspicion or distrust of his integrity, or the circulation of opinions which I disapproved, might be a sufficient reason to me to withdraw my confidence from Mr. Smith, to refuse him my suffrage; very different is my situation. It does not depend on my choice or opinion, who shall represent the State of Ohio in this Senate. I do not feel myself authorized to deprive Mr. Smith of his seat here, until he is proved to have been guilty of some infamous or disgraceful conduct. I have heard other intimations to awaken suspicion of Mr. Smith; but which I cannot regard in deciding on his case. Although I am not prepared to say that my mind is entirely satisfied of Mr. Smith's innocence, I am ready to declare that there is no proof to authorize me to pronounce him guilty. It is an axiom, which both education and experience have taught me to venerate, that no man ought to be declared guilty of crime on mere suspicion. Notwithstanding my hostility to the wicked and dangerous projects of Burr and his associates, and the reluctance I feel to vote in favor of a man even suspected to have been concerned with him; notwithstanding the popular indignation, which, to the honor of our country, has been so justly and so strongly manifested against this party; and notwithstanding the attempt, which from some of these affidavits, appears to have been made to bring party feeling and party sensibilities to play upon this question, not of a political nature, but one in which the personal rights and fame of a member are involved, I feel

myself constrained by a sense of duty and propriety to vote against the resolution.

Mr. CRAWFORD had determined to take no part in this discussion. The exposition which the subject had received from the gentleman from Massachusetts, was so clear, so comprehensive, and at the same time so candid, as to supersede the necessity of any remarks from him. He felt, however, constrained to make a few remarks in reply to the gentleman from Virginia. The Senate has been told by that gentleman, that its dignity has been assailed by the depositions taken on the part of Mr. Glover, in support of his credibility, that they have been procured on the presumption that this body is to be governed by political prejudices. If this objection is well founded, it applies with equal force to the conduct and testimony of Mr. Smith. From the first, to the last word of Mr. Smith's answer, he endeavors to impress upon this body the zeal with which he has been devoted to the present Administration. In the deposition of every witness examined by Mr. S. as to his own conduct, the witness is questioned upon that point—his zeal for the Administration is the principal point which he labors to establish. If then the dignity of the Senate is assailed by Glover it is equally so by Mr. Smith.

Another very convenient method of destroying the force of the depositions inculpating Mr. S. has been adopted by the gentleman from Virginia, and also from Kentucky. We are first told, that they have been taken without proper notice to Mr. Smith; but as many of Mr. Smith's depositions were taken in the same manner, and liable to the same objection, it was necessary to find some other objection to them, and especially to Mr. Riddle's deposition. What, sir, is this formidable objection to his deposition? One, sir, which if well founded must be effectual. We are gravely told, sir, if Mr. Riddle is an honest man, and not connected with A. Burr that Mr. S. would never have disclosed his views to him; and that if he was one of Burr's associates he cannot be an honest man, and therefore is not entitled to credit. This, sir, is a two-edged sword, which is destructive to the credit and reputation of Mr. Riddle indeed; and the same candid mode of reasoning, would be equally destructive to the reputation and credit of any other man. If the witness is an honest man, you are not to believe him, because Mr. Smith would not be so foolish as to disclose his views to him; and if he is a dishonest or suspicious character, to whom Mr. Smith might safely disclose his iniquitous plans, then you must believe him, because of his suspicious character. This reasoning may be ingenious, but it certainly has nothing in it of sincerity and candor.

The gentleman from Connecticut cannot believe that A. Burr, ever disclosed his projects to Mr. Smith, because all the persons to whom he disclosed them, were inimical to the Administration. It is true that in the Atlantic States, at least east of the Allegany mountains, that artful traitor addressed himself to persons who were in a state of enmity with the Government and to no other. He applied to General Eaton, who believed he had just cause of complaint against the Administration; who believed he had suffered absolute injustice at their hands. For the same reason he applies to Commodore Truxtun. But, sir, trace him from Philadelphia to Pittsburg—view his conduct on the western side of the same mountains. What is his conduct there? What is his conduct and conversation with the Morgans? His conduct and the motives of his conduct are changed. Here he endeavors to convince every man that it is the interest of the Western country to separate from the Atlantic States. Here he addresses himself to the most respectable and influential characters, who stood high in the estimation of the public, who had no cause of complaint against the Administration. The Morgans were not anti-ministerialists—they were respectable, they were influential; it was therefore important to obtain their countenance and support. Blannerhasset was a man of wealth and talents, and of easy credulity. He is applied to and secured. The next we hear of Aaron Burr is at the house of Mr. Smith. This gentleman stood high not only in his own State, was not only a Senator of the United States, but also a contractor for furnishing the Army of the United States. It was an object of the highest importance to the success of Aaron Burr's plans to obtain his aid and co-operation. But we have been told that it is improper in the investigation of this subject, to introduce the acts and sayings of Aaron Burr. If this is correct, there is an end of the question. After deciding this point, it was wholly unnecessary for the gentleman from Virginia to have performed the Herculean labor which he afterwards attempted. How sir, is it possible to convict John Smith of a participation in the views or plans of Aaron Burr, if the sayings and acts of Aaron Burr are to be excluded from the investigation? It is impossible sir. If this attempt to keep out of view the words and actions of Aaron Burr had been made by an advocate in a criminal court, it would justly be entitled *a coup de main*. Aaron Burr had the strongest possible inducements to seduce Mr. Smith and to obtain his countenance and assistance. He was contractor for your Army. He could procure supplies for his men, and the then situation of your Army was such, that the supplies procured and sent by the contractor might with equal facility be converted to the use of Aaron Burr or applied to the support of the legitimate army. The procurement of supplies in sufficient quantity for Burr and his men, by any other person, would have excited suspicion, and created alarm. He arrived at Mr. Smith's on the 4th September and remained an inmate of his house until the 9th or 10th, and yet Mr. Smith says he never mentioned to him any of his designs or plans, not even of the settlement of Washita lands. This he asserts in his letter of the 14th December to the Secretary of War. On the 6th January afterwards, he says and swears that Burr did during his first visit mention the settlement of those lands. Yet the gentleman from Virginia not only discovers no contradiction between the oath and letter, but thinks he discovers strong evidence of their consis-

tency and agreement. To me, sir, there appears a direct and palpable contradiction. On the 23d of October Peter Taylor arrives at the house of Mr. Smith and inquires of him, at his own door, whether he knew anything of Burr and Blannerhasset. "He allowed he knew nothing of them; that I must be mistaken; this is not the place; I said no, this was the right place," "Mr Smith, store-keeper, Cincinnati." "Sir I have lived with Blannerhasset for three years." Mr. Smith then took him up stairs, or he followed him up. He then made inquiries which tend strongly to prove that he was one of Burr's confidants, and gives Peter Taylor the very information he had asked, and the very information of which he had just before declared his ignorance. The testimony of this man is admitted by every one to be worthy of the highest credit. I shall therefore leave to the gentleman from Virginia the rugged task of proving the innocence of Mr. Smith without impeaching Peter Taylor's veracity.

That Mr. Smith should write a letter to Burr and direct it to Blannerhasset has been satisfactorily explained. But it is not easy to explain, nor has it been explained, by what means Burr could devise that the letter directed to Blannerhasset was a letter written to him, or contained a letter for him. The construction which this transaction, and the letters written by Mr. Smith and Burr to each other, have received from the gentleman from Massachusetts is the only candid and rational construction of which they are susceptible.

The Senate have been cautioned not to lay much stress upon the testimony of Colonel James Taylor, not because he is unworthy of credit, but because he deposes to a conversation which has long since past, and because Dr. Sellman was present and heard no such expressions. Sir, I believe the deposition of Colonel James Taylor contains not only a perspicuous declaration of what he believed, but also a correct statement of facts; a correct statement of what he heard. His deposition, it is true, was made long after the conversation happened; but shortly after that event he reduced it to writing, and communicated it to the Secretary of State, and to that writing he referred when under examination before the Senate. He also swears he conversed with General Findley, and that his understanding of that conversation was the same. Compare the circumstances under which Colonel Taylor testifies, with those which attend Dr. Sellman's deposition. If he was present at all, it does not appear that any circumstance whatever occurred to impress that conversation upon his mind—it does not appear, that he ever thought of it afterwards, until he was called upon to depose, which was more than fifteen months subsequent to the conversation; but it does appear that Dr. Sellman has acted the part of a partisan of Mr. Smith's. In truth, sir, there is not a single circumstance tending to confirm his statement of that conversation, in opposition to that of Colonel James Taylor.

I agree with the gentleman from Massachusetts, that it would be improper to declare a member of this body unworthy of his seat for the expression of mere speculative opinions; but the expression of these opinions, connected with other circumstances which preceded, and followed after it, amounts to very strong proof. We are called upon by the gentleman from Virginia, and also from Kentucky, to lay our fingers upon that particular part of the testimony which produces conviction in our minds, of the guilt of Mr. Smith. To this call, sir, I will observe that in all cases of circumstantial evidence, convictions are the result of a combination of circumstances; they are not produced by any one link in the chain of testimony, but by the whole chain taken together. If, sir, a conviction could not take place in a court of justice unless the jury could put their fingers upon the particular part of the testimony which established the guilt of the accused, it might happen that in nine cases out of ten the culprit would be acquitted.

My friend from Kentucky says, if John Smith has participated in Burr's treasonable and unlawful projects, it must have been by performing some act or in concealing it—that he is not charged with having performed any act, and that therefore the charge must be founded on his concealment of what he knew. I will not say that Mr. Smith has been charged with enlisting troops for Aaron Burr; but sir, I will say, that he has been guilty of an act very much like it—an enlistment of the strongest character—an engagement, or enlistment of his two sons to go with Aaron Burr—to march under his banner—subject to his control, under his absolute government, dependent upon him for their future prospects and station in life. And here, sir, I refer to the deposition of Mr. Smith himself. He swears, that Aaron Burr did at his second visit visit to Cincinnati, disclose his views of invading Mexico; and yet, sir, he engaged his sons in the enterprise.

But, sir, there is one point in the testimony, which of itself produces something like conviction on my mind, that Mr. S. was guilty of participating in Burr's plans. And here, sir, I will refer to the deposition made by Mr. Smith, and that of A. D. Smith already referred to by the gentleman from Tennessee, for a different purpose. Mr. S. swears that he never communicated to his son the engagement, with Burr until the day he returned from Marietta, and not till he had expressed a disinclination to co-operate with Colonel Burr's object. This deposition was made on the 6th January, 1807, and by a deposition of A. D. Smith of the same date, it appears he returned from Marietta on the 3d day of that month. It also appears in evidence, that for some time previous to this day, Mr. Smith had been in Kentucky, and that during that time A. D. Smith had become the bearer of a letter to Blannerhasset from Burr, and for that purpose had gone to Marietta and Belle Pre; and that the 3d of January was the day he met his father on his return. But A. D. Smith on the 13th August, at Richmond, swears, that he never received any overtures from Burr on that subject; yet he considered himself as engaged under him, for he says—"From the papers which daily 'teemed with the treason of Colonel Burr's de-

'signs; the frequent solicitations, and injunctions 'of my father, to relinquish the idea of descending 'the Mississippi as an accomplice of Colonel 'Burr's; and General Eaton's deposition alone in-'duced me to abandon him and his projects." Here, sir, the son declares he did not engage himself with Aaron Burr, yet he was engaged; he knew that he was engaged, and reluctantly broke that engagement. The father swears he engaged him; but that he never disclosed that engagement to him until he expressed his disinclination to go. From whom did A. D. Smith receive the knowledge of this engagement? The answer is too plain; from his father, and not communicated to him on his return from Marietta, but before he set out for that place; before the father set out for Kentucky; and a knowledge of this engagement is the only probable reason of his becomeing the bearer of that letter. But, sir, there is another contradiction, which ought to be noticed here. A. D. S. and his father met on his return from Marietta, and the frequent solicitations and injunctions of the father induced the son to abandon B.; yet the father swears he never disclosed the engagement he had made until the son had expressed a disinclination to go with B. This expression of Mr. S.'s is a contradiction in itself; but when compared with the declarations of the son, the contradiction is gross, and palpable. How could he solicit and enjoin his son to violate an engagement, which he knew nothing of? Sir, it is impossible to reconcile these contradictions. Upon this occasion my mind has received no bias whatever from the conversations and whispers alluded to by the gentlemen from Kentucky. I have lived in a section of the country that has not felt the general impression made by the movements and enterprises of Aaron Burr. I have attended to nothing but the testimony. I have had no acquaintance with Mr. Smith; I entertain no prejudice against him. I should feel as much gratified as any member of this body, to be able, consistently with my duty, to vote for his retaining his seat. Sir, the feelings of this House have been addressed—an appeal has been made to the humanity of the Senate. We have a duty to discharge which is paramount to humanity; instead of resigning ourselves to our feelings, we ought to exercise our judgment, and do that which the public good imperiously requires. From a full examination of the evidence, I am constrained to say, that the conduct of Mr. Smith has been such as to render it highly improper for him to retain his seat in the highest council of the nation.

Mr. ADAMS.—Mr. President, I had not intended to have risen again upon the discussion of this question, nor should I now rise but that the gentlemen from Virginia and from Kentucky (Mr. GILES and Mr. POPE) have so emphatically called upon the members who have expressed their intention of voting for this resolution, to lay their fingers upon specific facts which will warrant their votes. I agree perfectly with those gentlemen that suspicions, however strong, are no sufficient foundation for such censure as this upon the conduct of a public man. I certainly would not give my voice to the passage of this resolution upon mere suspicion. And I may confidently say to the members of this Senate, who have long witnessed my conduct here, that suspicion and jealousy form no part of my character. If in this respect I have ever been chargeable with error, I believe it may be thought to have proceeded rather from an excess than from a deficiency of confidence in the political integrity of other men.

The reason assigned in the resolution is the participation of Mr. Smith in the conspiracy of Aaron Burr, against the peace, union, and liberties of the nation. The conspiracy against our peace consisted in the projected Mexican invasion. The unquestionable fact which establishes Mr. Smith's participation in this part of the plan, is his engagement of his two sons for it, when communicated in special confidence by Mr. Burr. The other part aimed against the union and liberties of this country, consisted in the systematic attempt to instigate the people of that part of the country to a separation from the Atlantic States. The fact which establishes Mr. Smith's participation in this, is the conversation attested to by Colonel James Taylor, in which we see Mr. Smith's active co-operation towards the accomplishment of that object, in the mode which Mr. Burr himself says in his letter to him, is the only practicable mode for effecting it. These two facts demonstrate Mr. Smith's participation in the whole plan. The testimony of Peter Taylor proves a consciousness in Mr. Smith of unlawfulness in the whole enterprise. The pains which he took to avoid the grand jury at Frankfort, on the second arrest of Mr. Burr, and his declarations to so many persons that he knew nothing of the business, after Burr had so fully disclosed it to him, are something more than suspicious. The denial and subsequent admission of many material facts, the attempts to discredit witnesses of the fairest character, the varieties in Mr. Smith's own narratives, and the incredibility of many things upon which he principally relies, all concur in proving, that there is another narrative of the real transactions which has not been told. These are the foundations of inferences, which may indeed possibly be erroneous; but the engagement of his two sons is admitted by himself, and his promotion of disunion is fully proved by Colonel James Taylor.

The gentlemen from Virginia and Kentucky make very light of these facts. The first of them says, that Mr. Smith's testimony could not have proved anything against Burr, because Burr had told him he should attack Mexico if a war should take place. Why, sir, if this justifies Mr. Smith, it justifies Burr himself. He always declared his intentions against Mexico were to depend on the event of a war. I will not repeat what I have said before, and urge the utter impossibility that a man of common sense could be the dupe of this pretence; but if he were, Mr. Burr's preparations then were equally in violation of the law, whether a war had or had not ensued. If there can possibly remain a doubt of this, I must ask

your leave, sir, to read you the section of the law itself.

"*And be it further enacted and declared,* That if any person shall, within the territory or jurisdiction of the United States, begin or set on foot, or provide or prepare the means for any military expedition or enterprise to be carried on from thence against the territory or dominions of any foreign Prince or State with whom the United States are at peace, every such person so offending, shall, upon conviction, be adjudged guilty of a high misdemeanor, and shall suffer fine and imprisonment at the discretion of the court in which the conviction shall be had, so as that such fine shall not exceed three thousand dollars, nor the term of imprisonment be more than three years."

Now, sir, the offence is beginning or setting on foot, or providing or preparing the means for an expedition against a foreign Prince, with whom the United States are at peace, no exception for those with whom they shall be at war. Indeed the moment when there is a prospect of war is the very time when the remedies of this act are the most important and necessary. For such private enterprises have the strongest of possible tendencies to involve the nation in war, and they are precisely the things against which the law was intended to guard. Mr. Smith knew we were not at war with Spain. He knew that until war was declared, Burr's preparations were in the face of the law. Yet he engaged his two sons, and hurried away from Frankfort to avoid the grand jury, under the express and repeated allegation that he knew nothing of the business.

The gentleman from Kentucky says, that there were perhaps five hundred persons of distinction beyond the mountains, who gave as much countenance to Burr's projects, as from the evidence before us appears to have been given by Mr. Smith. Sir, I am very sorry to hear it, and I hope the gentleman is mistaken. If there are five hundred, or even fifty persons of a standing in society on the level of Mr. Smith, who, after personal and confidential communications from Burr of so much as Mr. Smith avows, gave him so much countenance as to engage themselves, or any part of their families, in his projects, the situation of that country and of this is truly alarming. Consider, sir, the character of Mr. Burr's projects and preparations even as they were avowed. The very act of raising men for military purposes, is a usurpation of the sovereign power—a usurpation of the most dangerous description. The determination to invade Mexico was not even pretended to be dependent upon authority from your Government. Mr. Burr was to be not hostile; he was to be a good neighbor. In every one of these terms, independent and sovereign power is directly implied. Is it possible, sir, to consider this as an offence of trivial magnitude?

I ask once more, had the war broken out, would you have consented to the appointment of Aaron Burr as commander-in-chief of your Army? Would the President have nominated him to this body? Would you have confirmed his appointment if nominated? I can speak but for one; but so far would he have been from receiving my vote, that I should have considered the appointment of him as a calamity to this nation heavier than the war. Of what avail are all the guards of your Constitution and laws, if a private individual by raising troops can compel you to place him at their head, in the heat of war? Are you aware of what import to this nation in case of war would be the character of your commander-in-chief? If we need warning let us ask counsel of the days that are past. What was it that carried this nation triumphantly through that tremendous conflict of the Revolutionary war, and secured to us the enjoyment of all the blessings which we have since possessed as an independent people? Was it not, under Heaven, in a great measure attributable to the character of the man who was selected as the commander of your armies? A man whom adversity could not break down—a man whom prosperity could not corrupt—in defeat, a pillar of strength—in victory, a crown of glory to his country; whose triumphs were the triumphs of the nation, in which every heart could participate? But what could have been the condition of this Union then, what would it be now, with a war upon your hands, if a desperate, an unprincipled, a profligate military adventurer, by levying bands of armed men without any authority, could intrude, could force himself upon this people as the leader of their armies? There is no danger that can befall us from which our ruin would so inevitably follow. Under such a General, defeat would be the mildest form that misfortune could assume. Every victory he should obtain, would be but a step to his own aggrandizement at the expense of our freedom, and the more brilliant his success might be, the more formidable would be his means for riveting chains upon this country. Sir, a design like this ought to have met from a Senator of the Union—from one of the guardians of the people's rights—instead of encouragements, the most determined opposition; and from this Senate it ought, as I conceive, to meet the most pointed reprobation. It is my deep conviction of this, and certainly no personal animosity to Mr. Smith, which has occasioned the zeal in the course of this proceeding, which has been made the occasion of reproach against me. The gentleman from Virginia, with all the powers of his eloquence, has this day appealed to the sympathetic feelings of the Senate, and roused every sentiment of compassion, which good men always delight to indulge, in behalf of Mr. Smith. He has painted in colors glowing with ardent benevolence the sufferings which must ensue to Mr. Smith, and the distress of an amiable family, which a decision unfavorable to him would occasion. Sir, I honor the source from which such observations proceeded—to the sentiments which dictated them. I trust our hearts all instinctively respond. But permit me to say, they are not the sentiments upon which the merits of this question can be properly decided. In the feelings of the man we are not to forget the duties of the citizen and of the legislator. We have seen the highest judicial authori-

ties of this Union unable to execute justice upon a crime of the most heinous and aggravated character. We are now to determine whether another of those great political institutions, on which the liberties of the nation are founded, shall be laid prostrate before the artifices of conspiracy and treason. The resort to the tenderness of our nature, and to the afflictions of an innocent family, augurs indeed not very auspiciously to the innocence upon which we are called to pronounce. It is an act of duty, and not of inclination which I feel myself bound to discharge, and that duty will still compel me to vote for the adoption of the resolution.

Mr. GILES.—Mr. President, I must acknowledge my obligations to the gentleman from Massachusetts (Mr. ADAMS) for the display of candor he has just given to the Senate. The gentleman from Georgia (Mr. CRAWFORD) misconceived the object of my call upon the favorers of this resolution. I did not call upon them to put their fingers upon any particular paper, or document, which proved any particular criminal act; but I called upon them to put their finger upon any criminal act, which they conceived to be proved by the whole, or any part of the evidence, by one link, or any number of links, or the whole chain taken together. The gentleman from Massachusetts has so understood me; and has undertaken to comply with the call. I have so much confidence in the candor and judgment of the gentleman, that I always deem it a misfortune to differ with him in opinion; but I cannot help observing, that, on the present occasion, his observations have added greatly to my confidence in the opinions I before expressed. I conceive the subject now before us, to be stript of most of its difficulties; it is now reduced within very narrow limits. The gentleman has put his finger upon only two acts of criminality against Mr. Smith. It is therefore fairly to be presumed, that in his judgment there cannot be any others imputed to him. These two acts consist in Mr. Smith's giving his two sons permission to accompany Burr in the settlement of his Washita lands; and in his conversation with Colonel Taylor, respecting the separation of the Union. Let these two acts of imputed criminality be examined. With respect to Mr. Smith's giving permission to his sons to accompany Burr in the settlement of his Washita lands, it should be remarked that all the information we have upon this subject comes from Mr. Smith himself, that it was communicated to the Secretary at War immediately after the receipt of the President's proclamation, and long before Mr. Smith had been accused, or suspected; and when he could not possibly have anticipated either suspicion or accusation. If Mr. Smith therefore conceived this to be a criminal act, is it possible to conceive, that he would have communicated it to the Secretary at War? Would not conscious guilt have induced him to conceal the circumstance? Mr. Smith communicates the fact and the object; in neither of which, can I see the smallest semblance of criminality. There can be nothing criminal in permitting his sons to partake of Mr. Burr's promised bounty, in the distribution of his Washita lands; as little criminality do I see in his permission to his sons to accompany Burr in an expedition against Mexico, *in the event of a war with Spain*—the condition alone, upon which the enterprise was to be undertaken; nor was this declaration of Burr's at all calculated to alarm Mr. Smith's suspicions, or to lessen his misplaced confidence in Burr. Suppose any gentleman in this Senate, residing in our northeastern frontiers, were to say in debate, that, in the event of a war with Great Britain, he would head a company of volunteers, and be the first to march into Canada; would it alarm our suspicions? Would it lessen our confidence in his integrity or patriotism? Certainly not. Why then should Mr. Smith be condemned, when, under precisely similar circumstances, the same expression did not alarm his suspicions, and enable him to penetrate into Burr's treasonable designs? It should be recollected, that Mr. Smith's confidence in Burr continued until the arrival of the President's proclamation; before that was known, he believed Burr's views to be honorable; but as soon as Burr was denounced by the President, Mr. Smith, with a laudable confidence in the proceedings of Government, surrendered his good opinion of him, and used the most active and effectual exertions to detect and suppress the conspiracy. What offence then does this transaction disclose against Mr. Smith? Why, nothing more than this:—that he did not penetrate into Burr's treasonable designs; that he was not a keener observer of the human character, and a better judge of human nature; but it discloses no act of participation in Burr's conspiracy—it discloses no crime. It was Mr. Smith's misfortune, the deplorable effects of which he feels at this moment; but it furnishes no evidence of even any intention to commit a crime, nor any knowledge of the intention of Burr to commit one. With respect to the other act of criminality imputed to Mr. Smith—his conversation about the separation of the Union—so far from this being a criminal act, amounting to a participation in Burr's conspiracy, it is no act at all. The evidence only discloses the impressions on the mind of the witness, as to the general result of a conversation. This impression is also proven to have been mistaken, by positive and irreproachable evidence. But, sir, in all cases, evidence of inferences from conversations, ought to be received with great caution, and limitation. How often, sir, do we hear the results of conversations, differently related by different auditors; even the most discerning and honest? How often do we see on this floor inferences made, from observations in debate, which are not attributable to them? Recollect, sir, a conversation during this present session, related from the President's table, respecting the additional army proposed to be raised. Gentlemen with the best intentions, I was informed, related it very differently; yet so much attention was paid to this uncertain mode of communication, that it was said to have arrested, for several days, the progress of the bill in the House of Representatives.

In the case before us, the impressions of the witness are not only positively disproved, but the witness himself admits that this is the only solitary instance in which expressions to the same effect were used by Mr. Smith, within his knowledge; and several respectable witnesses depose to their intimacy with Mr. Smith, and that they never heard such sentiments delivered by him at all, but often the reverse. I have, therefore, no hesitation in saying that I am perfectly convinced that Col. Taylor was mistaken in his impressions of the conversation; and I think it not improbable that if he himself were here, and could attend to the evidence, he would admit it was probable he was mistaken, because in his evidence he speaks of it rather as a questionable than as a positive point. I hope, then, sir, I may be excused from making a solemn declaration to the world that John Smith participated in the conspiracy of Aaron Burr, when the chairman of the committee of investigation, who has bestowed so much labor upon the subject, and is so entirely qualified for it, when called on, refers me to circumstances of the character just described, as the only acts of criminal participation on the part of Mr. Smith.

But, Mr. President, when in the United States, on all former occasions, we justly boasted of our laws and our liberality—of the security of the citizen in his property and reputation—of tempering our justice with mercy and forbearance—how does it happen, that in this case alone, the rules for the ascertainment of truth, long settled and approved, should be completely subverted, and these sacred considerations disregarded? How does it happen, on this occasion, that all the presumptions in favor of innocence should be converted into presumptions in favor of guilt? When did it before happen, sir, that former good conduct, and uniform good character, were discarded in an estimate of questionable incidents? When did it before happen, that laudable acts for the detection and suppression of offences were brought in evidence to prove a participation in those offences? When did it before happen, sir, that a citizen was solemnly declared guilty of a participation in offences, when those who pronounce the sentence cannot even name or describe the acts amounting to such participation? And when before did it happen, sir, that a citizen was stripped of his honor and his reputation, without the proof of a single act of criminality, and when his amiable and unoffending family was remorselessly involved in his unmerited doom? It surely cannot, in this case, be intended as an expiatory sacrifice to popular sensibility. It surely cannot be intended as a substitution for the punishment of the arch traitor who has strangely escaped from the clutches of the law. No, sir, it cannot be ascribed to such motives. It must be ascribed to a patriotic detestation of the whole conspiracy, and a fatal inaccuracy in discriminating the innocent from the guilty—fatal indeed, sir, to the accused and his family! Sir, to behold the honor and fame of an innocent fellow-citizen thus sacrificed, is an awful spectacle. I acknowledge that my feelings are much excited by a contemplation of the novel and extraordinary scene before us; but I hope the Senate will not accuse me of an attempt to influence their feelings in a case where the judgment ought to be so materially consulted. No, sir, I have no such design. I have only indulged the honest impulse of my own. I hope, at the same time, sir, that my opinions are not to be the less respected because they are approved by my feelings. I should suppose that the union of judgment and feeling would give a more sacred sanction to opinions it approved. I will, however, indulge myself no further in this investigation, but conclude with observing that I shall vote against the resolution, solely from the conviction of the innocence of the accused.

The question was now taken to agree to the resolution, and determined in the negative, two thirds of the Senators present not concurring therein—yeas 19, nays 10, as follows:

YEAS—Messrs. Adams, Anderson, Condit, Crawford, Franklin, Gaillard, Gilman, Gregg, Kitchel, Maclay, Mathewson, Milledge, Moore, Robinson, Smith of Maryland, Smith, of Tennessee, Sumter, Tiffin and Turner.

NAYS—Messrs. Giles, Goodrich, Hillhouse, Howland, Pickering, Pope, Reed, Smith of New York, Thruston, and White.*

* Mr. Smith did not formally resign his seat in the Senate, but addressed the following letter to the Governor of Ohio.

WASHINGTON, *April* 25, 1808.

To his Excellency Thomas Kirker, Speaker of the Senate and acting Governor of the State of Ohio.

SIR: I take the liberty of hereby making known, through you, a determination which I have long since formed, to resign my seat in the Senate of the United States. You will excuse my troubling you on this occasion, instead of the President of that honorable body; I prefer this course, though it may appear an unusual one, because I do not feel any obligation to conform to any ceremonies of retiring, which are not agreeable to me, and because I wish to give my reasons for withdrawing from political life, and to give them with more freedom than might possibly be considered consistent with the courtly style which might be required in an address to the Senate.

I am the more anxious to avow my motives, as I fear they may be misunderstood, and that such may be attributed to me as I would scorn to allow the least share of influence on my actions. It may be supposed, that, dissatisfied with the result of the late inquiry into my conduct, mortification and disappointment must have driven me from my seat in a body, of whose members a considerable portion, in point of numbers, have declared me unworthy of an association with them. This, sir, is far from being the case. I never expected, ardent as were my hopes, to extirpate all prejudices, to remove all doubts—I could not expect to convince those who were determined never to change their opinions, or that those who wished to pronounce on my guilt (in a summary manner) without allowing me to exhibit any evidence of my innocence, would listen to that evidence when I produced it; I could only offer a luminous mass of proofs to the world, but I could not force open all eyes to behold it. That this result was, however, in some measure different from what I expected, I pretend not to deny; that nineteen men could be found in the Senate of the United States to pro-

MONDAY, April 11.

Mr. GILES communicated the instructions of the Legislature of the Commonwealth of Virginia to their Senators in Congress, to endeavor to obtain an amendment to the Constitution, respecting the removal from office, by the vote of a majority of the whole number of the members of the respective State Legislatures, their Senators who have been, or may be, appointed to Congress.

The Senate took into consideration the report of the joint committee, made on the 7th instant, of "what business is necessary to be done by Congress, at the present session, and when it may be expedient to close the same;" and,

nounce me guilty, I did not suppose possible, and I will frankly own that when I saw it, though indignation was the predominant sentiment of my heart, yet it was in some degree mixed with other and more painful feelings. But, sir, it was the weakness only of a moment. I had many sources of consolation to add to those which a proud consciousness of innocence afforded me. In the first place, I saw who were the advocates of this resolution, and who were its opponents, and though I will not say that I did not regret the censure of the former, (for I desire the good opinion of all, the little as well as the great,) yet the open and honorable approbation of the latter extinguished every trace of such feeling; I saw, what the nation will see, and what every man must acknowledge, (who does not count Senators, like cattle, by the head,) that my right to my seat and character was established by as remarkable a preponderance of the talents, worth, and respectability of that House as ever distinguished one of its votes.

I also recollected that this proceeding was a public one, the proofs and principles on which it was conducted within my reach, and that it was in my power to exhibit them fairly and impartially, and claim an honorable acquittal from all who would do me the justice to read them—that if amenable to the laws of my country (as I certainly am if guilty,) I might be called to appear before any of her tribunals, and welcome with exultation any investigation.

I have it, also, sir, in my power to answer a question which may be here very naturally asked—"How is it possible, (it may be said,) that nineteen Senators could solemnly affirm the truth of an accusation, without some testimony to warrant it?" I am not so uncharitable as to say that all, or even many, of those gentlemen really believed me innocent; nor will I say, that all, or, perhaps, even any of them, are incapable of forming a correct opinion upon a plain matter of fact. No, sir, I do not thus, so highly impeach either their hearts or heads. But, I answer, (and it is an answer which they will, one day, have to urge as their excuse for the injustice they have done me,) that they had yielded, perhaps without a struggle, to the control of the most obstinate prejudice; that they wished to believe me guilty, and believed what they wished. They are not the only men who have been thus seduced. What absurdities are not believed; what glaring truths denied; what violations of propriety committed, when prejudice usurps the throne of the mind, and assumes the dominion of reason? To prove the complete surrender of their faculties to these motives, I need only refer to the proceedings of the Senate, during their investigation of my conduct. As I mean to detail these, together with the discussion, hereafter, I will now only ask, to what, but the most inveterate prejudice, can the very first step taken by the committee be attributed—when, on my application to their chairman to know whether I should be allowed to appear before the committee to hear my accusation, and procure proofs in my behalf, a resolution is adopted, forbidding any member to hold a private conversation with me on the subject? What, but prejudice, could have directed their answer to my subsequent demand of a hearing, when I am told that committee "have no authority to hear me in my defence?" When constituted for the purpose of inquiring into the truth of a charge, could reason tell them to confine their inquiry to the proofs against me, and to listen to no evidence in my favor? What but a partial and prejudiced report could be expected from an inquiry thus conducted? And, when this report is examined, what can excuse the extraordinary principles, and the gross mistakes, (to speak most tenderly of it,) which are contained in so labored a production? Passing over many circumstances of intemperate zeal and precipitation which attended the whole proceeding, what, but the blindness of prejudice, can account for the vote, given by most of these nineteen gentlemen, to decide immediately upon the accusation, without allowing any opportunity of procuring evidence to discredit or explain what was offered against me; and that, too, after I had stated, upon affidavit, the materiality of the testimony I could produce? Surely, men who were impartially and dispassionately inquiring after truth, could never have wished to declare a man guilty of a crime, and inflict upon him the severest punishment, without permitting any other testimony to be offered to them, except that which was intended to criminate him! Yet, this mode of "summary proceeding," as it was termed, was warmly recommended in the report, and found many advocates in the Senate. There is one circumstance, which so plainly shows the spirit of injustice and persecution manifested towards me by most of these gentlemen, (the weight of whose opinions it is surely fair that I should thus be allowed to deprecate,) that I cannot forbear to state it. When it was determined by the Senate that I should be permitted to procure evidence in my behalf, and the first day of March appointed for me to produce it, I was directed to give "reasonable notice" to all the witnesses against me, whom I meant to discredit, of the time and place of taking my depositions. This was on the 20th of January. The principal witness against me, Elias Glover, was in Cincinnati; the witnesses to discredit him, were in a distant part of New York and Connecticut, where he had formerly lived, and one or two in New Orleans. It will, therefore, be obvious that it was impossible for me to give him any such notice of which he could, in any manner, avail himself, provided my depositions were taken in time to reach Washington by the first of March. Yet, all that could be expected, I did. I proceeded immediately to Cincinnati, and thinking that perhaps the mail might out-travel me, I did send him a notice, by the mail, from Berryville, Virginia, on the 25th of January, (which on my arrival was also repeated,) and in which, I informed him that I should take testimony to discredit him on the 15th and 20th of February, in New York and Connecticut; that the time limited by the Senate would not allow me to delay it, but that I would permit him to appoint any subsequent day to cross-examine the witnesses I should produce, and would direct them to attend, if he thought

Resolved, That the President of the Senate and the Speaker of the House of Representatives. be authorized to adjourn their respective Houses on Monday the twenty-fifth day of April instant.

Ordered, That the Secretary notify the House of Representatives accordingly.

The bill brought up on the 9th instant for concurrence, entitled "An act to authorize the transportation of certain documents, by mail, free of postage," was three times read by unanimous consent, and passed.

The Senate took into consideration the amendments of the House of Representatives to the bill, entitled "An act for raising an additional military force," and agreed thereto.

Mr. MITCHILL, from the joint committee, ap-

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he could do so before the Senate would decide upon the subject. Notwithstanding this, when I offered the depositions, thus taken, of between twenty thirty and forty witnesses, to prove the infamy of this accuser, it was, to my amazement, urged that they ought not to be read, because the witness discredited did not receive that "reasonable notice" which the order of the Senate had rendered impossible; and most of these nineteen gentlemen actually voted to reject them.

What renders this still more extraordinary, is, that all the evidence they received to criminate me, (except that of Colonel Taylor, (was taken not only without any notice whatever to me, but with the most studied secrecy. Many were produced which I had never heard until they were read as evidence against me, two days before the final decision of the question; these also containing new accusations charging me with new facts, to refute which, I, of course, had no opportunity of producing evidence.

If any other proof, in addition to that which appears on the face of the proceedings, of the existence of prejudice against me can be necessary, it may be seen in the frank and honorable avowal of Messrs. Giles and Pope. These gentlemen candidly owned that their impressions had been strongly excited against me; that they were really apprehensive that their prejudices were so strong as almost to unfit them from rendering me strict and impartial justice; yet these gentlemen arose superior to an influence which so frequently subdues the powers of less vigorous minds; they declared that the proofs of my innocence were so clear and conclusive; that I had so completely disproved or explained every suspicious circumstance against me, that they not only believed me unconnected with the conspiracy, but entitled to the thanks of my country, for exertions in suppressing it. Certainly I can have no cause to regret any censure which has procured me the honor of so distinguished a commendation.

By what means or by whose agency these prejudices were excited against me, to what vicious sources they are to be attributed, it cannot be necessary to show. My accuser had the art to connect his tale with some trifling circumstances which might, until explained, justify suspicion; and although my testimony did explain them and prove his perjury most conclusively, it might yet have come too late for those minds, which, having once formed an opinion, think it true wisdom to persevere in it. I might also, sir, have shown (as I hope I did) at the commencement, and through the whole course of this inquiry, an unbending and unconciliating demeanor toward men who had manifested such a readiness to suspect me. There may, also, sir, have been some political feeling on this as on all other occasions. Some parts of my public conduct may have been disagreeable to my associates; some of my declarations and opinions (for even these were subjected to the scrutiny of their investigation) might, perhaps, be considered such as to render it 'incompatible with the privileges and dignities of the Senate, that I should retain a seat among them.'

There is one circumstance of this nature which I so strongly suspect to have been the source of some displeasure against me, and which is, in some measure, connected with the origin of the charge against my conduct, that I must be excused for detailing it: It will be recollected that this accusation was first made by a certain Matthew Nimmo, and forwarded, together with Glover's affidavit, in letters to the President of the United States. Had these creatures slandered me where they were known, I should have been careless of the consequences, but as their infamy might not be notorious enough to reach the President, I felt no little anxiety, as soon as I had reason to suspect what they had done, to remove any doubts their misrepresentations might have excited. I therefore wrote to him requesting to know by whom and of what I was accused? Not being answered, and thinking what I asked was reasonable, I wrote again and again. After a long time, I received an answer, which is now before me, in which I am told, that, 'though sorry to refuse any request of mine, a compliance with what I asked would be a breach of trust. That it is essential for the public interest that people should be induced to give him information, and therefore necessary that what is thus deposited should be secret and sacred.' I must confess that the 'salutations and assurances of great esteem and respect' which accompanied this polite refusal did not satisfy me. I considered that, if I could convince the President of the falsehood of this charge, (which I am sure I could have done) that the opportunity of doing so ought not to have been denied me. But if I could not, the information would then be strengthened and would justify him in any proceedings against me. And why should this concealment be insisted on only against me? Why should they be shown to others? Can anything be more unaccountable than that I should be told, in May, 1807, 'that, writing from Monticello, where he had not his papers to turn to, he could not even say whether he had received such as I mentioned,' but that if received, it would be a breach of trust to inform me of them, and yet that he should have just before delivered them to the Attorney General of the United States? When I ask for the means of refuting an insidious calumny, I am told 'that there is no danger of my being injured by it, as he considers such information as a mere suggestion for inquiry, that these papers must, therefore, be kept secret and sacred,' when in fact, instead of being kept secret and sacred, they had not been kept at all, but were at that moment in the hands of others as the foundation of a prosecution against me, and when too many of them, though material to my defence before the Senate, were actually lost. But, sir, independent of my individual wrongs, I did think it a most extraordinary and highly dangerous principle, which was thus brought into action and avowed in this letter. It opened to my view a system of encouraging malicious spies and informers, which I had always heard execrated as the most odious feature of tyranny, and never expected to see practised in a free Government like ours. I could not see how it was 'essential to the public interest' thus to subject men of the fairest characters to the most malignaut accusa-

pointed on the 24th of February last, to have the application of the money appropriated by the "Act making a further appropriation for the support of the library," made report; which was read for consideration.

The President communicated sundry resolutions of the Legislative Council and House of Representatives of the Mississippi Territory, respecting the misconduct of Peter B. Bruin, presiding judge of the said Territory; which were read.

The Senate resumed, as in Committee of the Whole, the report of the select committee, on the bill, entitled "An act concerning public contracts," and agreed thereto; and having further amended the bill, the President reported it to the House accordingly.

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tions, thus to patronize and protect the base and cowardly slanderer by sheltering his falsehoods and himself from exposure and disgrace. I, also, was still less reconciled to this principle, by observing the plea of State expediency or necessity (the very language of despotism) urged in support of it. Such, sir, were my thoughts upon this subject, and, warm with these feelings, I attempted not to conceal them, but (as I always have done, and I trust I ever shall) I expressed them frequently and freely. Nay, I did more, and what, to a guilty man, would have been the most impolitic and unsafe step which could be taken. I wrote to this very Matthew Nimmo, avowing my surprise and indignation at the treatment I had received from him and the Government. All which declarations, and this letter, were, as might naturally be expected, and as the event has shown, detailed and transmitted with due diligence to Washington, where they were no doubt 'kept secret and sacred,' until they were called forth by the late inquiry in the Senate. It is not my object, sir, to criminate the conduct of the President in this particular. He acted, no doubt, upon principles, in his opinion, correct; and, though I think them erroneous and unjust, I have no wish to question the sincerity of that avowal, which, I understand, he has made of his conviction of my innocence, and only regret that he did not think himself justified to allow me an earlier opportunity of justifying myself.

Nor have I stated this for the purpose of charging either the President with using, or any members of the Senate with submitting to, any influence or control in the institution or conduct of the proceedings against me. I am certainly less than ever disposed to indulge suspicions, when I have just seen how fatally even some honest minds may be seduced by them. I might otherwise have thought it even yet uncertain whether I was beyond the reach of that secret, mysterious, and inquisitorial power to which I have been subjected—whether it ceases its operations when it has collected its proofs—or whether it is also "essential to the public interest" to continue its unseen agency in dictating or devising a punishment.

No, sir, I only contend, that, by thus censuring the Administration, I must have subjected myself, in some degree, to the displeasure of that Administration and its zealous supporters, and that to this is to be attributed (without in any manner impeaching their integrity, for whose integrity renders him superior to all human infirmities?) that prejudice which I have so manifestly shown in the judgment of those who censure me; and it is most probable that this feeling towards me was considerably increased by the inclination which this conduct indicated of withdrawing my allegiance from that Administration and that party to which I have rendered my decided, though not obsequious support. I have thus endeavored to show that those prejudices, which so often and so powerfully pour themselves into deliberative bodies, from party spirit, political resentments and attachments, and various other sources, and which were so wisely foreseen and guarded against by the framers of our Constitution, operated so plainly and forcibly on this occasion as to leave me no room to be dissatisfied with a decision, which, under existing circumstances, I regard as a signal triumph.

There is also one other motive, sir, to which I should be equally unwilling that my resignation should in any degree be attributed—I mean, to a request to that effect which the Legislature of Ohio thought proper to make of me. However willing I might have been to retire from my station, I could not think it either reasonable or just to ask me to do so, and thus shrink from an expected inquiry, which I was most solicitous to meet. Had I been as guilty as those gentlemen believed me, the case would have been different; and, though I am now willing to make allowances for a hasty and intemperate vote, and am persuaded that every member of that Legislature will do me the justice to examine my justification, and have the candor to avow his mistake, I yet must beg to be excused from paying any respect to a proceeding which unjustly prejudiced my cause, and sanctioned a calumny which I had then no opportunity of refuting.

No, sir, my determination to abandon a public life has arisen from no consideration in any manner connected with the circumstances I have been detailing. It has been formed upon mature reflection and observation, and would have been long since effectuated but for those accusations against my conduct, which my duty to myself, my family, and my friends, called upon me to defy and expose. I had long before seen enough of the political world, the bitterness of its contests, the malignity of its persecutions, the overbearing arrogance of some, and the disgraceful compliances and base arts of others, to excite my disappointment and aversion. To such a state of things have these incessant heats and struggles reduced our country, that any man who looks calmly around him must see and deplore their poisonous effects. Not only in the councils of the nation, but in almost every station of life, he may see in politics the source of numberless vexations and oppressions—the fruitful mother of a thousand calamities—the betrayer of principles—the corrupter of morals. Has a man attached himself to a party; he is in chains. From that moment he is expected to renounce his own opinions—his own principles—and follow blindly wherever he is led. He is to support and oppose measures, not as his own conscience and understanding shall inform him, but often in direct opposition to the clearest dictates of both. Does he dare to break from this disgraceful bondage—is he rash enough even to speak with irreverence of any of the idols whom he is commanded to worship—he is denounced, reviled, and upon the slightest pretext persecuted to his ruin. I have long thought, sir, that a far different spirit from this was necessary to give dignity, harmony, and strength, to public deliberations, and to save our nation; that every man should cast off this vassalage of party; that he should not only disdain any obligation to adopt the opinions and support the measures of others, but that he should exert his own talents in the most unprejudiced manner, and act only as his own conscience directed him, without any solicitude as to who should vote with him or against him.

Ordered, That this bill pass to the third reading as amended.

The Senate resumed, as in Committee of the Whole, the consideration of the amendments reported by the select committee to the bill, entitled "An act concerning courts martial and courts of inquiry," and agreed thereto, and farther amended the bill; and the President reported the bill to the House amended.

The Senate resumed the second reading of the bill in relation to the military academy of the United States; and the further consideration thereof was postponed until Friday next.

The Senate resumed the second reading of the bill regulating the proceeding in issuing and executing the writ of habeas corpus, for the purpose of inquiring into the causes of commitment; and it was agreed that the further consideration thereof be postponed until the first Monday in December next.

TUESDAY, April 12.

Mr. ADAMS stated, that he, together with his colleague, were instructed by the Legislature of the State of Massachusetts, to use their best endeavors to procure such an amendment to the Constitution of the United States, as will empower the President of the United States to remove from office any of the judges of the courts of the United States, upon an address to him made for that purpose, by a majority of the House of Representatives, and two-thirds of the Senate, in Congress assembled.

On motion, by Mr. ADAMS,

Ordered, That the instructions be referred to the committee appointed the 25th of January last, on the subject of amendments to the Constitution, to consider and report thereon.

We have, I hope, some such characters as these—some shining examples of this independence and greatness of mind—and no man more sincerely wishes than I do to see their numbers and consequence strengthened. But of this I almost despair. To stem this prevailing and overwhelming current, calls for the united force and talents and confidence of our country. Sensible that I could yield but a feeble and inefficient aid to this great object, I willingly retire, with the hope that my place may be filled by one who possesses more ability (more zeal he cannot) to support the honor and interests of the nation.

I have been insensibly drawn, sir, into a much more considerable detail than I had intended. It will be attributed, I trust, to my desire to place in a correct point of view the motives which have prompted me to this, the last act of my political life.

I pretend to no stoical indifference to the opinions of my fellow-citizens—to those particularly with whom I have been more immediately and dearly connected, who, unsolicited, have honored me with their confidence on many occasions, and whose esteem and friendship I have regarded as my greatest enjoyment. I have felt an irresistible impulse to justify myself, and this must be, in some degree, my excuse for having thus trespassed on your patience.

I am, sir, with due respect, your Excellency's most obedient servant, JOHN SMITH, *of Ohio*.

Mr. ADAMS, from the committee appointed the 6th instant, on the report of the Secretary of the Treasury, respecting roads and canals, reported that 1,200 copies of the following papers be printed for the use of the Senate, to wit:

A letter from the Secretary of the Treasury on roads and canals, together with his report thereon;
Circular queries on the subject;
Mr. Latrobe's communication marked E; and,
Mr. Fulton's letter marked F.

The bill, entitled "An act concerning public contracts," was read the third time. On the question, Shall this bill pass as amended? it was determined in the affirmative—yeas 21, nays 4, as follows:

YEAS—Messrs. Adams, Crawford, Gaillard, Goodrich, Gregg, Hillhouse, Kitchel, Maclay, Mathewson, Milledge, Pickering, Pope, Reed, Robinson, Smith of Maryland, Smith of New York, Smith of Tennessee, Thruston, Tiffin, Turner, and White.

NAYS—Messrs. Anderson, Bradley, Condit, and Howland.

Agreeably to notice given on the 4th instant, Mr. ADAMS asked and obtained leave to bring in a bill for the relief of Joseph Summerl, Simon Philipson, William Hamon, Archibald McCall, and Isaac Clason; and the bill was read, and ordered to the second reading.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to alter and establish certain post roads," in which they request the concurrence of the Senate.

The bill was read, and ordered to the second reading.

Mr. POPE gave notice that he should to-morrow ask leave to bring in a bill for the establishment of a turnpike in the county of Alexandria, in the District of Columbia.

On motion, by Mr. ADAMS,

Resolved, That the Secretary of the Treasury be requested to transmit to each member of Congress, after the close of the session, franked, by the mail, six copies of his report on the subject of roads and canals, together with the accompanying documents, twelve hundred copies of which have been this day ordered to be printed.

Mr. BRADLEY gave notice that he should to-morrow ask leave to bring in a bill to alter the time for the next meeting of Congress.

Mr. SMITH, of Maryland, gave notice that he should to-morrow ask leave to bring in a bill to continue in force an act declaring the assent of Congress to certain acts of the States of Maryland and Georgia.

AMENDMENTS TO THE CONSTITUTION.

Mr. HILLHOUSE.—Being about to offer a resolution proposing sundry important amendments to the Constitution of the United States, I must ask the patience and attention of the Senate to some preliminary remarks, to explain their tendency and object.

The situation of the United States at the time of the meeting of the Convention for forming the Constitution, I well remember; and it will be re-

collected by every member of this Senate to have been such as to excite the anxious solicitude of every considerate man in our country. External pressure being removed, the recommendations of Congress had ceased to have effect on the States. We were a nation without credit and without resources; or rather without the means of drawing them forth. Local policy began to operate in a manner that tended to excite jealousy and discontent among the States; and there was reason to fear that we were exposed, and at no remote period, to all the calamities of civil war. Under these circumstances, the present Constitution was promulgated, and was eagerly seized on by the great body of the people, as the palladium of our liberties, and the bond of our Union. I was of the number of those who approved it, though some parts of it appeared to me mere theories in the science of Government, which I hoped in the experiment would prove salutary; but my expectations were not sanguine.

It has been with anxious concern that I have seen a disposition, and various attempts, to make partial amendments to the Constitution, which have, in some instances, prevailed. Others are in progress. All are aimed at particular detached parts; which, without examining or regarding the bearing on other parts, like partial alterations in a curious complicated machine, may, instead of benefiting, destroy its utility.

Some gentlemen have expressed their regret for having voted for amendments already adopted. Other amendments are on your table, and coming from such high authority as to demand serious attention. From the alarm and jealousy excited in the public mind, there is danger of other partial amendments still more injurious. Believing as I do, that amendments, and important ones too, are necessary, which materially affect the office of President, and the power of the two Houses of Congress, and without which our country will be exposed to incalculable evils; under these impressions, and to attempt a radical cure, I am induced to come forward at this time with my amendments.

Before I proceed with my explanatory remarks, I must take the liberty of stating, that in using the terms monarchy, aristocracy, or democracy, I do not use them as the cant words of party; I use them in their fair genuine sense. The terms Federalist and Republican, I do not use by way of commendation or reproach; but merely by way of description, as the first names of individuals, to distinguish them from others of the same family name.

Federalists and Republicans never divided upon the elementary principles of government. There are very few Americans who are not in principle attached to a free republican government; though they may differ on minor points, and about the best mode of organizing it. Persons attached to monarchy or aristocracy are few indeed; they are but as the dust in the balance. No one in his sober senses can believe it practicable, or politic if practicable, to introduce either. If ever introduced, which God forbid, it must be done at the point of the bayonet.

It is well known that the denominations of the parties, called Federalists and Republicans, were applied, the former to those who supported, the latter to those who opposed the two first Administrations formed under the Federal Constitution. Those who opposed those Administrations, wishing to obtain the governing power, and disliking the name of Anti-Federalists, given to the first opposers of the Constitution, assumed the more popular name of *Republicans*. It cannot be expected that a politician, when he has made himself up for a political ball or masquerade, will exhibit his true character. Many of the most florid speeches are made more with an eye to the people, than to the body to which they are addressed. To find the true character of man, you must look to his homespun, every-day dress; if you do this, will you not find a full proportion of good Republicans, as they are called, who exhibit no more of that virtue called humility than their neighbors, and who manifest no greater regard for equal rights? The supposed differences are more imaginary than real. Names may, and sometimes do, deceive ignorant, uninformed individuals; but these names now scarcely do that.

As the amendments I shall propose are not to commence their operation, until the 4th of March, 1813, which is beyond the term of service of any one now in office, they cannot be considered as having any personal application; and I assure this Senate, that I do not intend, by anything I shall say, any personal or party allusion. As I am about to tread on delicate ground, and do not wish to give offence, I thought it incumbent on me to make these explanations.

Some of the important features of our Constitution were borrowed from a model which did not very well suit our condition: I mean the Constitution and Government of England, a mixed monarchy, in which monarchy, aristocracy and democracy, are so combined as to form a check on each other. One important and indispensable requisite of such a Government is, that the two first branches should be hereditary, and that the Monarch should be the fountain of honor and source of power. In the United States, the People are the source of *all* power.

We have not the materials for forming an Executive capable of wielding royal prerogatives; nor an aristocratic Senate, which could form a barrier between the exercise of such prerogatives and the spirit of democracy. The President and Senate, depending for office on a popular election, are constrained to regard popular opinion. The idea of insuring an energetic and fair administration of the Government, by increasing patronage, and accumulating power and prerogatives in the hands of the President, is visionary.

Two evils to be guarded against in a republican government, (such as is that of the United States, and such as I hope and trust it ever will be,) are *ambition* and *favoritism*. The former induces the most aspiring, artful, and unprincipled men to assume the garb of patriotism for the purpose of obtaining office and power; and when they have obtained it, they extend their patronage and favor

to those who have been most active and instrumental in procuring their elevation.

There is no position more generally admitted to be true, than that man is fond of power. When ambition is alive, and competitors for office take the field, those means which promise success will be resorted to. None are more powerful, or can be used to greater effect, than the gift of lucrative and important offices; and none will be more zealous and indefatigable in their exertions than expectants of such offices. A golden eagle will bribe but one man; but an office may operate as a bribe to one hundred expectants. A man who would spurn at a direct offer of money, may be induced to believe he may accept an office without dishonor. To an ambitious man, how great must be the self-denial that would not permit him to use such powerful means to obtain an election which alone can raise him to the most dignified office in the nation!

Placing in the hands of the Chief Magistrate, who depends on a popular election, prerogatives and powers in many respects equal, in some, exceeding in practice those exercised by the King of Great Britain, is one of the errors of the Constitution. This error can be corrected only in one of two ways; either the office must be stripped of those high prerogatives and powers, and the term of holding the office shortened, or some other mode devised, than a popular election, for appointing a President: otherwise, our country must perpetually groan under the scourge of party rage and violence, and be continually exposed to that worst of all calamities, civil war.

The President of the United States is Commander-in-chief of the Army and Navy; and, when called into actual service, of all the militia of the nation. He has the sole power of nominating to offices; and exercises the power, at his will and pleasure, of removing from office. He has a qualified negative on all laws. He has the sole power of directing the diplomatic intercourse with foreign nations, and of forming treaties; which, though he cannot ratify, he may reject without the approbation of the Senate. He has the power, not of declaring war in form, but of adopting a course of measures which will necessarily and inevitably lead to war. He has the power of granting pardon for all offences against the United States, except in cases of impeachment. He is entrusted with the execution of all laws, and grants commissions to all officers. These are some of the powers and prerogatives vested by the Constitution in the President; others will be found by a careful perusal of it. Can these great powers and high prerogatives be more safely trusted in the hands of the President, who may be an aspiring man, and may have friends and favorites about him anxious for office, than with the immediate representatives of the people, and the Senate representing the sovereignty of the States?

I may be told, and I admit, that it is easier to point out defects in the Constitution, than to propose remedies: on this point I feel the difficulty; I feel great diffidence. The magnitude of the subject presents to my mind embarrassments hard to be surmounted; and nothing could have induced me to hazard my amendments, but a sense of duty enjoined by my official situation, and a distressing apprehension of the danger to which we are exposed. I shall not shrink from the task of proposing a remedy, and attempting to avert the impending danger.

I am aware I have engaged in a difficult undertaking. I have to oppose deep-rooted prejudices and long established opinions, which will be abandoned with reluctance. I have to contradict favorite theories, long ago adopted, and still strenuously maintained. It is therefore to be expected that arguments which go to destroy the former, or contradict the latter, will be admitted with caution, and listened to with a reluctant ear. Some of the amendments, when first presented to my mind, made but a slight impression, and I was disposed to pass them by as impracticable or ineffectual: but experience and mature reflection have satisfied me both of their correctness and importance.

I am aware that the amendments will not be approved by many individuals in this nation, under an apprehension of their tending to lower the tone and energy of the Government. They will be denounced by all office hunters, demagogues, and men of inordinate ambition, more anxious for their own elevation to office than for the public good. All artful men, who rely more on their dexterity and skill in intrigue, than upon honest merit, to secure an election, will raise their voices and cry aloud against them. They will describe them as utopian and visionary; as departing from the elective principle; and as lowering the dignity and character of the Government. But the great body of the people, who compose that portion of the community which can have no views or interests incompatible with the general welfare, which can have no other wish or desire than to see the nation prosper, and which the feelings of nature would stimulate to do what would advance the prosperity and happiness of future generations, will, I flatter myself, lend a listening ear, and grant me a candid and patient hearing. I must also be permitted to indulge the hope, that, in this honorable body, the amendments will not be hastily rejected; nor until they shall have undergone an attentive and critical examination.

A prominent feature of the amendments is, to shorten the term of service of the President, Senators, and Representatives; observation and experience having convinced me, that in an elective Government, long terms of office and high compensations do not tend to make independent public servants, while they produce an anxious solicitude in the incumbents to keep their places; and render seekers of office more eager to obtain them, and more regardless of the means.

It is a sound position, that in a republican Government like ours the public will, that is, the sentiment of the majority, when fairly and fully ascertained, should prevail: it will, in most cases, comport with the public good. Opinions produced by a sudden impulse of passion, by a feverish, unnatural excitement, or by the intrigues of artful,

designing men, are those against which it is necessary to provide. The idea of tying up the hands of the people, who in fact possess the whole power, to prevent the execution of that public will, is chimerical; there are no cords strong enough to hold them. The most effectual, and indeed the only effectual guard, against popular passion and jealousy, is to let the people see clearly and distinctly that there always exists an opportunity for a fair expression and execution of the public will, and that they are in no danger from abuse of power; seeing their public functionaries are obliged frequently to resort to them for a renewal of their authority to exercise their power. No man's jealousy or fears can be excited respecting the exercise of a power which he clearly sees to be subject to his own control. What excites alarm among the people is, an accumulation of power in the hands of an individual, or of a small body of men, which, added to long duration in office and high salaries, they believe may endanger their liberties. To this poison, frequent elections are a complete antidote. Here the people see and understand that there is perfect security; and when an attempt is made to excite their fears or alarm their jealousy, they will ask, what possible danger can there be? have we not the power in our own hands? and must not these public functionaries, at short intervals, resort to us for power to act at all? A popular flame cannot be kept alive where there is no fuel to feed it.

My first amendment goes to reduce the term of service of the members of the House of Representatives to one year. (See Article 1.)

No inconvenience can arise from this arrangement; because there is a Constitutional provision that Congress shall assemble once in every year. That body, composed of the immediate representatives of the people, ought to exhibit a fair representation of their sentiments and will; and, coming fresh from the people to the Congress of each year, will, it may be presumed, fairly express such sentiments and will. And if, in an interval from one session of Congress to another, there be a real change of public sentiment, why should not that change be expressed? Will an attempt in their Representatives to resist it, tend to tranquillize the public mind? or will it not, like persecution in religion, tend to make proselytes to their sentiments?

Constitutions, except so far as they are necessary to organize the several departments of Government, and bring the public functionaries into a situation to deliberate and act; and, in the General Government, to draw the line of demarcation between that and the State governments, to prevent interference and collision, are of little avail; and present but feeble barriers against the public will. Whenever a measure is understood and believed to be necessary to promote the general welfare, the people will not fail to effect it. If they cannot, by construction, get round the Constitution, they will, by an amendment, go directly to their object. Of the truth of this, experience has furnished ample proof. The danger is, that by attempting to extend Constitutional restrictions too far, unnatural and mischievous exertions of power may be produced.

By the second amendment, the term of service of the Senators is to be reduced to three years; one third to be chosen each year. (See Article 2.)

The Senate, I am aware, may be surprised, and perhaps feel some displeasure, that one of their own body should propose an amendment, which, in the estimation of some, may tend to lessen their dignity, and destroy their independence. Did I believe this, I should be the last to offer it. If the Senate will hear me patiently, I think I can show that it will produce no such effect.

In the affairs of Government, *theories* are more deceptive than in any other of our concerns. Matters of *fact* and *experience* alone can be safely relied on. That the six years' term of service of Senators does not tend to permanency, the two Houses of Congress furnish a striking example. In the Senate greater changes have taken place than in the other House, in which I see many members with whom I had the honor to serve, previous to my being elected Senator. In this body there is not a single person who was a member when I first took my seat; and but one who had before been a member. Half the present Senate have been taken from the House of Representatives; where, from having been submitted to the frequent choice of the people, they had acquired their confidence. The same observation holds good also in State Legislatures; where the shorter the term of service, the more uniformly and steadily have the same members been returned. In defiance of all *theories*, this is the *fact*. To me the reason is obvious. The oftener a Representative is returned to his constituents, and is by them re-elected, the obligation of duty on his part is increased, and their confidence strengthened. As in private life, a frequent interchange of kind offices begets attachment and friendship. The shorter the term of service, the less the inducement to individual exertion to obtain the place; and the people will be left to a more *free* and *uninfluenced* exercise of the right of suffrage. It is an axiom not to be questioned, that the people, left to a *free, unbiassed* exercise of the right of suffrage, will, in most instances, make a judicious and wise choice. They can have no interest or inducement to do otherwise. When they have found a good man, *capable* and *faithful*, they will, if left to themselves, be inclined to continue him in the public service, so long as he shall continue to be capable and faithful.

Senators represent the rights and interests of States in respect to their sovereignty. In them, therefore, the States ought to feel a *confidence*. And this confidence will rather be increased than lessened by shortening the term of service to three years. Shall I be told that the Legislatures of the States are not to be relied on for their *stability* and *patriotism*? that it would be unsafe, every third year, to trust them with the appointment of their Senators? No, surely. The several States are the *pillars* on which the Constitution of the United States *rests*, and *must rest*. If these pillars are not sound, if they are composed of feeble,

frail materials, then must the General Government moulder into *ruin*. This, however, is not my belief. I have confidence in the State Governments. I am for keeping them in their *full vigor* and *strength*. For if any disaster befals the General Government, the States, having within their respective spheres, all the power of independent Governments, will be the arks of safety, to which the citizens can flee for protection from *anarchy*, and the horrid evils which follow its train. I have therefore uniformly been opposed to measures, which had the remotest tendency to their consolidation.

When I shall have stated the next amendment, it will be found that my plan, instead of lessening the dignity and importance of Senators, will magnify their office, and make it the object of desire and laudable ambition to the best characters and greatest talents of our country: for, from the Senate, I propose that the President of the United States shall always be taken; and in a manner that will exclude all *cabal* and *undue influence* in obtaining that high office—a mode in which the man of modest merit shall have an equal chance of success with the most daring and artful intriguer.

The third amendment provides for the appointment of a President. He is to be taken by lot from the Senate, and is to hold his office for one year. (See Article 3.)

This mode promises many advantages, and only two objections against it present themselves to my mind; one, that it is a departure from the *elective principle;* the other, that it will not always insure the best talents. I should not have proposed this mode, if any other could have been devised, which would not convulse the whole body politic, set wide open the door to *intrigue* and *cabal*, and bring upon the nation incalculable evils; evils already felt, and growing more and more serious. Upon mature examination, those objections appear less formidable than at first view.

When Senators shall be chosen with an eye to this provision, every State will be anxious to make such a selection of persons as will not disgrace it in the eventual elevation of one of them to the Presidential chair. Every State Legislature would, in the choice of a Senator, consider itself as nominating a candidate for the Presidency. The effect of this arrangement would be, in reality, that, instead of the States appointing Electors to choose a President, the Legislatures themselves would become the Electors; with this advantage, that the nomination would be made when not under the influence of a Presidential electioneering fever. In the regular course of appointing Senators, only one nomination would be made at one time in each State; and in most cases, three years would elapse before he could be designated for the Presidency. The great caution in the selection of Senators, with a reference to that high office, would produce another excellent effect: it would insure the continuance, in that body, of men of the most respectable talents and character—an object of the highest importance to the general welfare. In the mode directed by the Constitution for choosing a President by the House of Representatives, there is almost as great a departure, as in what I propose, from the pure elective principle; which requires perfect freedom of choice among all who are eligible; and that the ballot of each qualified voter shall have equal weight in making such choice. Whereas, by the Constitution, the House are confined to three candidates, and must vote by States; so that a State having twenty-two members, has but one; and, consequently, no more weight than a State having only a single member. And those States whose members shall be equally divided, will have no vote. These circumstances considered, the present Constitutional mode of choosing a President by the House of Representatives, when tested by the pure elective principle, may be deemed, as to the mode of choosing, and the object of the choice, as exceptionable as the appointment by lot; while it remains liable to all the evils of a contested election, from which the appointment by lot is wholly free.

In answer to the second objection, it may be fairly presumed, that the Senate will always be composed of men possessed at least of decent talents. And such men, with honest views, long experience, and the aid of the Heads of Departments and other officers, would be able to do the public business correctly. It is not necessary, it is not desirable, that the President should command the armies in person; and all our foreign relations may be managed through the agency of able Ministers, whose appointments are to be approved both by the Senate and House of Representatives. The several Executives, ever since the adoption of the Constitution, have been in the habit of calling to their aid a Cabinet Council, composed of the Heads of Departments; who ought to consist, as they probably will, of men of talents, integrity, and experience; and who, upon the plan proposed, being likely to continue long in office, will thereby give stability and system to the measures of Government.

The affairs of almost all Governments have been managed by Ministers subordinate to the Chief Magistrate. To this rule Alexander the Great, of ancient times, and of late the great Frederick of Prussia, and the Emperor Napoleon, furnish exceptions. Here let me ask, have the rights of individuals, or the liberties of mankind, been more safe, or have public affairs been conducted in a manner more promotive of the happiness of the people, when such mighty Monarchs have swayed the sceptre, than when the Chief Magistrate has possessed only moderate talents? Let history and our own observation decide.

If the appointment by lot will not always insure a President of the first rate talents, neither will the present mode of electing; for when party spirit runs high, and parties are nearly balanced, candidates will be set up, not for their talents, but because they are popular and can command votes. And there may be a possibility of having a President for four years, distinguished neither for talents nor integrity. A President appointed by

lot, will possess the advantage, and in practice it will be found a very great advantage, of coming into office free from party influence; which, under the present mode of electing, is seldom if ever to be expected; and it is to be feared that it will be too powerful to suffer even an honest man to do right.

Ours is intended to be a Government of laws; the only kind of Government under which a country can be said to be free. Every departure from this principle will be of dangerous tendency; and every grant of power or discretion, the exercise of which is not prescribed by law, is a departure, and so far produces a Government of men. No matter whether this power or discretion be placed in the hands of one man or a small body of men, short of the whole Legislature, which alone perfectly represents the nation. For this reason I always disliked that part of the Constitution which authorized the President and Senate to make appointments to office; and still more the exercise of a power assumed by the Executive of removing from office; a power which I can no where find given in the Constitution. It must be admitted, that if we are to have a Government of men, and not of laws, and the President is to be intrusted with the exercise, at his discretion, of great powers and prerogatives, he ought to possess transcendent talents, and great integrity and firmness. But if the Legislature will be at the trouble of making all necessary laws for regulating and managing the affairs of the nation, as it is their duty to do, and the amendments I propose to regulate the appointments to, and removals from office, shall be adopted, there will be very little left to the discretion of the President; and without hazard to the public welfare, he may be taken by lot from the Senate.

To cross the Atlantic, in the first instance, required the genius, firmness, and enterprise, of a Columbus; but with the aid of a compass and charts, a man of moderate talents and information, and possessing common prudence, may navigate the ocean in safety. To organize and put in operation a new Government, requires great talents and rare accomplishments; but now that our Government is under way, and furnished with laws and a well digested system, which are the compass and charts of the political pilots, with these aids a number of men may be found in every State fully competent to take the helm. And after the present plan shall have been sometime in fair operation, we may presume on having Presidents taken by lot from the Senate, equal in talents and integrity, and superior in experience, impartiality, and regard to the public good, to Presidents chosen in the present mode. For it should be remembered, that the purpose for which Senators are appointed, (which is to manage public affairs, and represent the State in one of the important and independent branches of the National Council,) will insure practical men, who, generally speaking, may be more safely trusted, and more fully relied on for prudent and efficient management of the concerns of the nation, than men famed for science and abstruse learning. The latter will be more likely to be well acquainted with nice theories in Government, than with what is practically useful.

Appointing a President by lot from the Senate, will give every State an equal and fair chance of participating in the dignity of that high office; will prevent the possibility of bargaining among the large States to the total exclusion of the middling and small States; and will thus remove one ground of State jealousy, which must inevitably grow out of our present mode. As it regards the sovereignty of the respective States, the appointment by lot is in exact conformity to the principles of the Constitution; for in the event of an election of a President by the House of Representatives, each State has an equal vote, conformably with its equal rights as sovereign and independent; so that, in respect to peace and union, this mode of appointing a President would produce effects of great and lasting importance.

Being always disposed to ground my political maxims on experience and fact, and not on theories, however flattering in their appearance, I am happy to have it in my power to say, that this mode of appointing important officers, by lot, where intrigue or undue influence was apprehended, is not novel. It has been practised with advantage in many republics, and particularly in some of the republics of Switzerland, where civil liberty and equal rights were well understood and enjoyed. The limits of my explanatory remarks will not admit of my going into the subject at large and producing the authorities; which, however, should it become necessary, I will not fail to do on some future occasion. But I cannot forbear to mention the instance of a small republic in Switzerland, where a Chief Magistrate was appointed, by lot, out of five candidates, nominated by Electors. No evil or inconvenience is stated to have arisen from it; on the contrary, it was attended with many benefits. It checked intrigue, cabal, and undue influence, and tranquillized the State. One-third of the Senate is not so great a number of candidates for the United States as five for that small republic. The greater the number, the more effectually does it exclude intrigue and cabal; for there would be little inducement to electioneer for the chance of being selected, by lot, as President, for one year only, out of a class who shall have served three years in the Senate. If such a mode was found salutary in a small republic, (less likely than a large one to be convulsed by a popular election,) it must prove much more so in such a widely extended country as the United States, where the consequences to be apprehended from civil commotion can better be imagined than described.

In Berne, the largest of the republics of Switzerland, whose "whole administration has been celebrated for its uncommon moderation, precision, and despatch," the bailiffs, who, in their bailiwicks, "represented the sovereign authority, put the laws in execution, acted as judges in civil and criminal cases," and whose offices were lucrative, were appointed, by lot, from the Grand Council. The bailiffs were formerly elected; but

this mode was abandoned on account of the undue influence which operated, and which ever will operate, in the election to an office to which are attached great power and emolument.

As the President is to be taken from the Senate, and, if worthy of the Senatorial office, must have experience, and be well informed of the affairs of the nation—and can also avail himself of the information and talents of every member of the Government—there can be no solid objection to reducing his term of service to one year. The President will always enter on his office at the close of the session of Congress; and during the recess have time to make himself more fully acquainted with the state of the nation, so as to present a proper view of it to the next Congress, as well as to conduct successfully the public business to the end of his term. No serious embarrassment or inconvenience, in conducting the public business, has been felt from the change of a President or the Head of a Department. There are and always must be subordinate officers around the Government, well acquainted with the routine of business; which will and must proceed in its usual course. If any example were necessary to show that no injury would arise to the nation from an annual appointment of a President, I might instance the ancient Republic of Rome—where, in the days of her greatest virtue, prosperity, and glory, her chief magistrates, or consuls, were chosen every year. But, being taken from the Senate, a body conversant with the management of their public affairs, as is our Senate, no evil accrued to the public.

The office of President is the only one in our Government clothed with such powers as might endanger liberty; and I am not without apprehension that, at some future period, they may be exerted to overthrow the liberties of our country. The change from four to ten years is small; the next step would be from ten years to life, and then to the nomination of a successor; from which the transition to an hereditary monarchy would almost follow of course. The exigencies of the country, the public safety, and the means of defence against foreign invasion, may place in the hands of an ambitious, daring President, an army, of which he would be the legitimate commander, and with which he might enforce his claim. This may not happen in my day; it probably will not; but I have children whom I love, and whom I expect to leave behind me, to share in the destinies of our common country. I cannot therefore feel indifferent to what may befall them and generations yet unborn.

I do not desire in the smallest degree to lessen the President's power to do good; I only wish to place such salutary checks upon his power, as to prevent his doing harm. His power of nominating and appointing to office, and removing from office, will still be continued; with only the additional check of requiring the consent of the House of Representatives, in one case, and of the Senate and House in the other. All his other powers will remain the same as at present, and there will be but little danger of an abuse of those powers, if the term of Presidential office be reduced to one year, and the appointment be by lot: which will render it impossible to bring the high perogatives of this office to aid in procuring it. An artful intriguer cannot then point to the various lucrative offices, in the gift of the President, for the purpose of stimulating exertion in favor of his election; than which a more powerful engine could not have been devised.

Party spirit is the demon which engendered the faction that have destroyed most free governments. State or local parties will have but a feeble influence on the General Government. Regular, organized parties only, extending from the northern to the southern extremity of the United States, and from the Atlantic to the utmost western limits, threaten to shake this Union to its centre. No man can be so blind but he must see, and the fact is too notorious to be denied, that such parties have commenced in this country, and are progressing with gigantic strides. The danger is great, and demands an early and decisive remedy. There is but one, which presents itself to my mind; this is, to cut off the head of the demon. For without a head, without a rallying point, no dangerous party can be formed, no such party can exist. There is but a single point in the Constitution, which can be made to bear upon all the States at one and the same time, and produce a unity of interest and action, and thus serve as the rallying point of party; and that is the Presidential election. This most dignified and important office of President, made more desirable by having attached to it a high salary, great power, and extensive patronage; cannot fail to bring forth and array all the electioneering artillery of the country; and furnish the most formidable means of organizing, concentrating, and cementing parties. And when a President shall be elected by means of party influence, thus powerfully exerted, he cannot avoid party bias, and will thence become the chief of a party, instead of taking the dignified attitude of a President of the United States. If some other mode of filling the Presidential chair, than that of a general election throughout the United States, were devised and adopted, it would be impossible to form national parties. There would in some instances be State and local parties, but they would have a very inconsiderable effect on the General Government; they would be like town or county parties in States, which have a limited operation on the councils of the State. Indeed this Presidential election does more than anything else towards making parties in States—parties dangerous to their ancient institutions, and producing an injurious effect upon their most important concerns. In one word, it is now manifest, that the present mode of electing a President is producing, and will produce, many and great evils to the Union, and to the individual States.

The framers of the Constitution were, I am told, strongly impressed with a sense of the difficulties and dangers which would attend a Presidential election, and hence the various projects which were offered, considered, and rejected. But

to prevent a total failure of the object of their convening, they finally adopted the novel and complicated mode contained in the Constitution: calculating upon it as a mode that would secure a fair, unbiassed exercise of the right of suffrage. To guard against official and Congressional influence, the electors were to be chosen in each State, of whom no member of Congress or officer of the United States was to be one. To prevent combinations among the States, there was allowed but a short interval between the time of their being elected and that of giving in their votes. To prevent cabal among the electors, they were to meet in their respective States, and give in their votes on the same day. To guard against State attachments, two persons were to be voted for as President, one of whom at least was not to be of the same State with themselves. And to insure a fair canvass of the votes, they were to be opened, and the election declared, in the presence of both Houses of Congress: the person having the greatest number of votes, if a majority of the whole number of electors appointed, to be President; and if more than one have such majority, and have an equal number of votes, the House of Representatives to choose by ballot one of them for President: if no one have a majority, then, out of the five highest, the House of Representatives in like manner to choose a President. In both cases the votes are to be taken by States, the representatives from each State having one vote. This mode, so beautiful in theory, has substantially failed in practice.

The ingenuity of man being great, is it not to be feared that the time will come, and would it not be cause of deep regret if the time should come, when the country shall be so divided into parties, that a small number of persons, and those exclusively members of Congress, (who are intended by the Constitution to be excluded from all intermeddling in Presidential elections,) and that too in the very focus of Presidential and official influence, (which the Constitution meant carefully to guard against,) shall nominate a President? And to secure his election, it will be required that every person before he shall receive a vote or an appointment as an elector, shall pledge himself to support such nomination; and thus the President will in fact be made to choose the electors, instead of the electors choosing the President.

Various modes of election or appointment of a Chief Magistrate have been tried; sometimes the choice has been confided to the people—sometimes to a Legislature—sometimes to a Senate—sometimes to electors chosen by the people, or the Legislature—and sometimes by electors designated by a complication of lot and ballot. But in no instance of the election of a Chief Magistrate, clothed with royal prerogatives, where the votes were permitted to be given directly for the candidate, has it been possible to exclude undue influence, intrigue, and cabal; which have produced serious evils, and sometimes ended in civil war: evils so great and terrible, as to induce most nations to prefer an hereditary succession.

If this mode of appointing a President by lot should not be approved, I see but one other shield from the calamities to be apprehended from a popular election of a Chief Magistrate. This is, to strip the office of royal prerogatives, and of all power excepting so much as shall enable the President to become the organ of the public will, in such manner as shall be directed by law; to shorten the term of service, and lessen the salary. This will moderate the desire of obtaining the office, and paralyze individual exertion. If we mean to preserve both our internal peace and liberties, we must consent to give up the trappings, as well as the name of royalty; and be content to wear the humble garb of Republicans. If we will not make this sacrifice—if we will have the splendor of royalty—must we not, like the Israelites of old, have a King?

The experiment of a Chief Magistrate with limited powers, and no discretionary prerogatives, has been successfully tried in some of the States, and those not inferior in respectability and importance to any in this Union. The Chief Magistracy is conferred by annual elections; and the Governor is little more than *primus inter pares*—the first among his equals. Those States have been remarkable for their uniform, steady, and firm adherence to their ancient institutions; and the Governors of no States have displayed more energy in the execution of the laws, both of the General and State Governments, in aiding the prompt and impartial administration of justice, or in calling forth the military force for defence. In those States, prior to Presidential elections, very little party animosity or divisions existed, either in relation to the election of Governor, or to the manner of executing his office. In these cases, the Governor not having the general power of nominating or appointing to, or removing from office, sudden, frequent and general changes of the subordinate officers of the State, do not take place. And can it admit of a question whether the public good is advanced by such changes? Is there not danger that such extraordinary powers as are given in some Constitutions may be abused? Is it not possible, nay more, is it not probable, that Chief Magistrates may be found, who will use their powers to aid their elections, and to reward such as shall be most active and zealous in promoting them?

Of the impropriety and impolicy of the present mode of electing a President, can there be stronger proof, can there be a more convincing evidence, than is now exhibiting in the United States? In whatever direction we turn our eyes, we behold the people arranging themselves under the banners of different candidates, for the purpose of commencing the electioneering campaign for the next President and Vice President. All the passions and feelings of the human heart are brought into the most active operation. The electioneering spirit finds its way to every fireside; pervades our domestic circles; and threatens to destroy the enjoyment of social harmony. The seeds of discord will be sown in families, among friends, and throughout the whole community. In saying this, I do not mean anything to the disadvantage

of either of the candidates. They may have no agency in the business; they may be the involuntary objects of such competition, without the power of directing or controlling the storm. The fault is in the mode of election; in setting the people to choose a King. In fact, a popular election, and the exercise of such powers and prerogatives as are by the Constitution vested in the President, are incompatible. The evil is increasing, and will increase, until it shall terminate in civil war and despotism. The people, suffering under the scourge of party feuds and factions, and finding no refuge under the State, any more than in the General Government, from party persecution and oppression, may become impatient, and submit to the first tyrant who can protect them against the thousand tyrants.

I have dwelt so long on this amendment, because of the novelty, in this country, of appointing a Chief Magistrate by lot. The facility of appointing by lot was obvious; but it seemed necessary to exhibit, and to demonstrate the many and highly important advantages which will arise from this mode of appointing a President of the United States. The principal of these I will now present in one short view:

1st. It will make the Senate more respectable.

2d. It is prompt and certain.

3d. It will avoid the evils of a disputed election, now unprovided for in the Constitution.

4th. It will exclude intrigue and cabal.

5th. It gives talent and modest merit an equal chance.

6th. It is economical.

7th. It gives to the people a President of the United States, and not the chief a party.

8th. It removes temptation to use power otherwise than for public good.

9th. It will annihilate a general party pervading the whole United States.

10th. It will remove a direct, powerful, and dangerous influence of the General Government on the individual States.

11th. It will prevent the influence of a Presidential election on our domestic concerns and foreign relations. And,

12th. It will secure the United States against the usurpation of power, and every attempt, through fear, interest, or corruption, to sacrifice their interest, honor, or independence; for one year is too short a time in which to contrive and execute any extensive and dangerous plan of unprincipled ambition; and the same person cannot be President during two successive years.

Reducing the Presidential term of service to one year, will remove the necessity of attaching to the office the splendor of a palace. The simplicity of ancient Republics would better suit the nature of our Government. The instances of persons called from the plough to command armies, or to preside over the public councils, show that in a Republic pomp and splendor are not necessary to real dignity. Cincinnatus, who was content with the scanty support derived from tilling, with his own hands, his four-acre farm, has been as celebrated in history as the most splendid monarchs. By these remarks I would not be understood to object against giving adequate salaries to all public functionaries. In the case of subordinate officers, it may be left to Legislative discretion. But the President having such great power and extensive influence, his compensation ought to have a Constitutional limit, and not exceed fifteen thousand doliars. (See Article 4.)

Less than that, perhaps, may by the Legislature be judged sufficient.

It will be readily seen that, upon my plan, the office of Vice President can be no longer useful. It is therefore to be abolished, and provision made for choosing a Speaker of the Senate. (See Article 5.)

The exercise of the power of appointment to office is both delicate and difficult. To exclude the operation of favoritism is important, as it regards the public good. And it is not less so to secure in the various offices men of talents and integrity. Almost any Government, under the management of able and honest men, will prove a blessing; and the best form of Government, in the hands of bad men, will be a curse to a people. The principle of checks applies with more force, and the necessity of them is as great, in relation to appointments to office, as in passing laws; favoritism being more likely to have influence in such appointments. The next amendment, therefore, is to provide a like security in both cases, by requiring the advice and consent of the Senate and House of Representatives to appointments to office, where other provisions shall not be made by law. (See Article 6.)

This additional check will make it somewhat more difficult to obtain an office; but that will be more than countervailed by the additional guard which it will afford against the introduction of bad men. It is impossible for any President to know the characters of most candidates for office. The knowledge of the Senate is also very limited, as every day's experience shows; the Senators being obliged, individually, to make application to members of the other House for information. Both President and Senate are exposed to misinformation. Under these circumstances, what better source of information can we have than the Representatives of the people, coming from every portion of the Union? They can, and when it is made their official duty, they will, give correct information. Another circumstance which renders this amendment proper, is, that the President is taken from the Senate; some check, therefore, against the favoritism of the Senate would seem proper. The requiring of the concurrence of both Senate and House of Representatives would induce a greater caution in the Executive in making nominations, and more circumspection in the Senate in passing upon them.

Most of the observations on the preceding amendment will apply to the next which I shall propose; which is, to make the consent of the Senate and House of Representatives necessary to removals from office. (See Article 7.)

Though no express power is given by the Constitution to the President to remove from office, it

has been assumed and exercised in a manner which gives to the President almost the absolute power of appointment; for, having the power to fill vacancies which take place during the recess of the Senate, the persons so appointed to hold their offices to the end of the next session of the Senate, and having exercised the power of making vacancies at pleasure, by removal from office; no appointments made by and with the advice and consent of the Senate, can continue more than one day, or while the Senate continue their session, if the President is pleased to exercise his power of removal. A tremendous power this, which will enable a President to remove every officer of the army, from the commanding general to an ensign, at pleasure; to appoint and grant commissions to his partisans, to continue in force to the end of the next session of the Senate; to remove all civil officers, judges only excepted, and to make new appointments for the same term: thus having the absolute command both of the sword and the purse, a sufficient length of time for an enterprising, ambitious man to execute his purposes, especially after having had two or three years to mature his plans; and when aided by the whole civil authority and military power of the country, placed in the hands of men devoted to his views, and subordinated to his will. Such officers, having lawful commissions, issued in conformity to the provisions of the Constitution, could not be resisted without incurring the penalties of the law, and being liable to criminal prosecutions and infamous punishment; which, no doubt, would be promptly executed upon them. Then would treason laws, sedition laws, and the whole penal code, be brought into active operation.

Having these impressions, I have never been able to persuade myself to believe that the framers of the Constitution, whose great aim was to give security to our nation's rights, and who have so carefully guarded all the lesser avenues to the Temple of Liberty against the unhallowed footsteps of usurpation and despotism, should not only have thus left wide open the principal gate, but have delivered into the hands of such an assailant the key of the temple, and the very sentinels placed to guard the entrance.

Having gone through, and explained the various amendments which I propose to offer for consideration, I will close my observations with a few general remarks upon the different kinds of Government, including our own.

In a monarchy, the powers of Government are concentrated in one man, whose will is the supreme law. This is the most energetic and powerful of all Governments for military enterprise or conquest. The whole resources of the nation being subject to the control of a single chief, are capable of being directed with the greatest energy and effect. In the hands of an able Prince, whose measures are directed by wisdom and a supreme regard for the public welfare, and whose aim is to promote the real prosperity and happiness of his subjects, (which, unfortunately, too seldom happens,) this kind of Government is perhaps as conducive to the tranquillity of the nation as any other. But such a Government cannot be elective, as the experience of all ages has demonstrated. It must be hereditary, and is thus liable to all the chances of a weak or wicked succession. And the proportion of such characters is too great to be risked, but in cases of inevitable necessity. In regard to the United States, this form of Government is out of the question. We have neither the materials of which to form such a Government, nor the disposition to introduce it.

Aristocracy is a Government in the hands of nobles. Venice, among others, exhibited an example, where the rights and interests of the few were preferred to those of the many. It was a most undesirable Government. To form an aristocracy, privileged orders and hereditary succession are indispensable. The moment you limit the privilege, in its duration, to any term short of life, or admit the popular voice in its creation, by subjecting it, at regular periods, to a popular election, it ceases to possess the necessary attributes of aristocracy. The United States do not possess the materials for forming an aristocracy. We have no privileged orders; nor should we readily consent to make a selection of men on whom we would confer such privileges, and agree that they should enjoy them as a right of inheritance. It is impossible, therefore, that an aristocracy should grow up or exist in the United States. We have not the means of making even an aristocratic branch to our Government.

A Democracy is a government wholly in the hands of the people; where, in their own proper persons, and not by representatives, they manage their own national concerns. Athens, in ancient Greece, nearly answered this description; and, as long as the people preserved their virtue, it was powerful, prosperous, and happy. The great evil to which such a government is exposed, is, that, in a sudden impulse of passion, or of groundless jealousy, the people are excited to some rash and mischievous act, which, when their passions subside, they review with the deepest remorse. A popular assembly, inflamed by artful designing men, condemned Socrates, the good and great, to die. After the sentence was executed, their passions subsided; they repented the rash deed, and decreed distinguished honors to his name. When the morals of the people begin to decline, "Demagogues, the greatest curse of free Governments," make their appearance; and, under the garb of patriotism and love of country, insinuate themselves into the confidence of the people; procure their own elevation to office; and, by their machinations and intrigues, carried on under this specious garb, finally overturn the liberties of their country. Of this melancholy truth, the experience of former republics furnishes abundant proofs, and these ought to serve as a beacon to our country. The people can have no possible interest in supporting such men: but, led into a blind confidence in them by their professions of patriotism, are made the instruments of their own destruction. In ancient republics, the wisest and most virtuous of their citizens were sometimes exclud-

ed from office, banished, and even put to death. When a citizen claims to be an exclusive patriot, and is very officious in proclaiming his own merit, it is time for the people to be alarmed.

When the three kinds of Government above described are united, as in the Government of Great Britain, it is called a mixed Monarchy. There is always such a spirit of jealousy existing between aristocracy and democracy, and between monarchy and democracy, that they cannot long exist together, without a third balancing power. As well might a man take up his abode in a tiger's den, as aristocracy with democracy, unless protected by the strong arm of monarchy. Neither can monarchy and democracy dwell together, unless the throne be surrounded by a powerful aristocracy. Singly, democracy is an over-match for either. The reason is obvious—there is the physical force, numbers. Whenever an attempt has been made to oppose either monarchy or aristocracy, singly, as a check on democracy, they have been found too feeble to support themselves: discord has arisen; which has generally terminated in the overthrow of such check; and democracy, remaining master of the field, and freed from all restraint or check, has degenerated into faction, and paved the way to despotism—despotism of the worst kind, which has entered at the door of discord and civil war. It is a cause of deep regret that it should have been the unhappy lot of most countries where liberty has found an asylum, to lose it by its own excess. And this will be our case, unless effectual provision be made to stem the torrent of party spirit and violence.

To superficial observers, our Government may seem to be assimilated to the mixed Government before mentioned. But, as the materials necessary to compose such a Government do not and cannot exist among us, whatever attributes of power appropriate to these deficient materials, are introduced into our Constitution, ought to be taken away; for in practice they are found only to bring evils, unmixed with benefits. Ours is a free representative Republic, deriving all power from the people; and, when amended as I propose, for the purpose of checking party spirit, Executive influence, and favoritism, will correctly express the public opinion, and declare the public will. The people being numerous, and spread over a large extent of territory, cannot meet together and personally manage the public concerns; and are, therefore, obliged to elect a few individuals to represent them in public councils, and confide to them the management of their public affairs. Every branch of our Government, being elective, rests on the public will. And, could the people be left to a fair, uninfluenced exercise of their right of suffrage, and our public councils be guided in their deliberations and decisions by an honest zeal for the public good, regardless of personal views of elevation to or continuance in office, ours would be the best and happiest Government that does, or ever did exist.

That I may not be misunderstood, I do most expressly declare, that, in a free Government, such as is that of the United States, deriving its power wholly from the people, I do consider *checks* to be necessary; nay, more, to be indispensable. Without them, the Government could not exist, but would be like a ship under full sail, in a brisk wind, without ballast. But the checks must comport with the principles of a popular government; which, including all hereditary distinctions, must depend for its support on a proper distribution of power. Those principles require, what experience has demonstrated to be correct, that, as those who exercise the powers of government are *individually equal* in their *rights*, and alike derive their authorities, directly or indirectly, from the people: they be divided, whenever they are assembled, into several branches, or departments, each, when acting on the same measure, having a check on the other. Thus, in the Legislature, the two Houses must each have an absolute negative on the doings of the other; and the Executive a qualified negative on both. In *this* there is security, that every subject will be *discussed* and *decided* on in the two Houses *separately*. This will tend to arrest *hasty* measures, and prevent *favoritism:* for, upon the plan proposed, it would be rare indeed if an excitement of *passion*, or a *sudden impulse* of feeling, should operate, at the same moment, in the three departments, to induce the adoption of an improper measure; or that a candidate for office should have such good fortune as to secure the concurrence of all three to his appointment, on the ground of mere *favoritism*.

The different branches of the Government, from a regard to their own privileges and character, and influenced each by that *esprit du corps* and self-respect which political bodies naturally possess, will feel a pride in correcting the errors and mistakes of the other. An act, after it has passed both Houses, must be considered and decided upon by the Executive, who, if he disapproves, is to return it, accompanied with his reasons for such dissent. Then it is to undergo a revision; and cannot take effect but by a concurrence of two-thirds of each branch, under the high responsibility of having the measure entered at large on the public journals, with the reasons against its adoption, together with the name and vote of each member—who thereby pledges himself for its policy and correctness. Under these checks, it would be strange, indeed, if a measure, manifestly ruinous in its consequences, or very injurious to the nation, should not be arrested in its progress; if, however, it should unfortunately be otherwise frequent elections, and the short duration of the term of office, will put it in the power of the *nation* to *correct* the *evil*. Improper acts sometimes pass, through inattention, or misapprehension of their tendency—this is to be expected; it is incident to human frailty.

It having been shown that a long term of service does not tend to produce an independent course of conduct, but the contrary, the term of service ought to conform to the convenient and beneficial organization of the Government. One year for the House will bring every session of

Congress to succeed a new election; one-third of the Senators will also have been newly elected. Two-thirds of the Senate remaining, they can check a ruinous measure brought forward by the House of Representatives, chosen under any sudden impulse, which for a moment might agitate the nation, and under the influence of which the election may have been made, until the people shall have had one year to consider, and a new election shall have taken place; when, if the measure be still persisted in, it may be considered as a fair expression of the public will, and ought to pass. Any attempt to add a further check or restraint would be useless, perhaps injurious; as it might lead the people to such an exertion of power to overcome such restraint, as might make a breach in the Constitution.

In the opinions of men respecting *liberty* and *free government*, there are two extremes to which we are exposed, which are the *Scylla* and *Charybdis* of such governments, and which ought carefully to be shunned, as the inclination to one or the other exposes to shipwreck. On one hand, too great an apprehension of danger from popular instability and violence may excite a wish to increase the *energies* of the Government to *excess*. This, instead of insuring personal safety, and giving stability and security to our systems, tend to excite *jealousy* and *fears* among the people, and to impel them to exertions of power often injurious, and sometimes dangerous. On the other hand, apprehensions of *mighty evils* from too much *energy* in government, have produced the opposite extreme, and have led many to attempt to take away all restraint on the *popular will*, and induced a wish to place the supreme legislative and executive power in the hands of a single body, chosen under the greatest possible popular feeling; excluding altogether the benefits of those checks which secure deliberation. A division of the same men into two branches, deliberating *separately*, and rendered *independent* of each other, by a negative reciprocally absolute, would conduce to *consideration*, and a *prudent result*, and afford a great security against rash intemperate acts.

Another rock, which presents danger, and on which liberty has most generally been shipwrecked, is party spirit. Whenever a free people become so divided into parties, as, that all elections and appointments to office become a struggle between the ins and the outs; liberty is in danger, the public good is lost sight of, and the Government degenerates into a faction, which is made subservient to the most oppressive party persecutions, and is subject to continual fluctuation and change. At such times, modest merit retires from public employment, and the affairs of the nation fall into the hands of men, whose sole recommendations are zeal and violence. As the ins have nothing to give, and the outs will have the public offices at their disposal, on the event of a successful election, the Government will be continually vibrating between parties. What possible interest can the great body of the people have in such a state of things? Are the interests, peace, and happiness, of the many, to be sacrificed to the few? Are the people's rights nothing, and the claims of a few individuals to office everything? And who are these few? They are office hunters, and ambitious men, who, not content to walk in the paths of private life, aim only at their own elevation; men who profess to love the people, in order to mount on their shoulders to power and wealth. It may be asked, why is it thus? I answer, that such men, regardless of the real interest, always address themselves to the passions of the people, which lock up their understandings and judgments close prisoners.

The only effectual way of remedying these evils, is, to remove the causes. This may be done by returning the Representatives, by frequent elections, to the people; by shortening the terms of service of the President and Senate; by reducing the salary of the President; by avoiding, as much as possible, the accumulation of power in the hands of an individual, or a small body of men; and, above all, by constituting such a mode of obtaining a Chief Magistrate as shall not be made the instrument of arraying the people, from one end to the other of this extended empire, into parties, under different chiefs, the candidates for the Presidential chair.

The organization of the General and State Governments exhibits the most remarkable combination of checks and balances of individual and State security ever known. The General Government, as it regards the nation, has a sovereign and controlling power over the seventeen State governments; while each of these, independent and sovereign for all local and State purposes, depends on, and is connected with, the General Government by the strong attraction of its national interests. The General Government, like the sun in the solar system, is the centre of attraction, and the bond of union; and its provisions for the common defence and general welfare, like the rays of the sun, give life and activity to the nation. As the planets, in their revolutions around the sun, have their distinct spheres of attraction and control; so the States, separately, possess complete sovereignty, each within its own jurisdiction and limits, extending to its citizens protection to life, liberty, and property. How much is it to be lamented, that a system, so beautiful in theory, and so beneficial in practice, should be disturbed by that fiend, party spirit—that prince of the power of the air, who can invade every sphere—that demon, who can pass the bounds of every State, and, by sowing discord and divisions, destroy social harmony, overturn the most valuable institutions, and endanger the liberties of our country!

I have been obliged, for the purpose of explaining the practicability and operation of the amendments, and of proving and illustrating their utility, to take a considerable range; though they are simple, few in number, and easily made; and, when made, will leave the other provisions of the Constitution unimpaired, and in their fair, full, and perfect operation. They may be comprised under four heads:

1st. As to the Legislative body, to shorten the

term of service of the Representatives from two years, to one, and of the Senators from six years, to three.

2d. As to the Executive, to shorten the term of office of the President from four years, to one, reduce his salary, and alter the mode of his appointment.

3d. To abolish the office of Vice President.

4th. To place an additional check on the President's power of appointing to and removing from office.

I shall be asked, whether, at a time when we are threatened with danger from abroad, and have party dissensions at home, is it not an inauspicious season for bringing forward amendments to the Constitution? Why I have been so long silent, and have not before presented this all-important subject to the view of Congress and the nation? These are questions which I have well considered, and I have fully satisfied myself that now is the proper time, and probably the only time, to engage attention. In times of perfect tranquillity every man is occupied with his farm, his merchandise, and other objects by which he may acquire subsistence, wealth, and honest fame. Seeing no immediate danger, he gives himself no concern about the Constitution. The time of danger is the only time when public attention can be universally excited.

The Constitution, in those parts which I propose to change, appeared so beautiful in theory, that no attempt to alter it would have attracted the smallest notice, until, by experiment, it should be found to be ineffectual for the purpose intended—a fair election of a President, and a beneficial exercise of the powers and provisions of the Constitution. The experiment has been made, and many of the people of the United States are now satisfied that amendments are necessary, are indispensable; and this is, perhaps, the first moment when I could have gained an audience to such amendments as I think necessary, and such as alone can effect a radical cure.

From the circumstances of the time, may I not hope for their adoption? Is there not reason to fear, that, if we sail on a little longer in the stream of party, the current will set so strongly, that we cannot return; but must descend a cataract, which will dash in pieces our national ship?

The importance of the subject will furnish my apology, for having taken up so much of the time of the Senate, in explanatory remarks. The sentiments I have expressed have not been hastily adopted; they are not the sudden impulse of the moment; nor do they proceed from the collision of party. They are the sober sentiments of my heart; some of which I have long entertained, and often expressed to my most intimate and confidential friends. And they are sentiments which seventeen years' experience, as a member of the Senate and House of Representatives under this Constitution, has served to impress and enforce on my mind; and, during that whole period, there has not occurred one solitary fact to disprove their correctness.

May I be permitted, in this hour of alarm, when almost the whole civilized world is engaged in a destructive and exterminating war, when thick clouds hang lowering over our heads, and danger surrounds us on every side, to invoke patriotism—to call to our aid love of country—to enable us to make a willing sacrifice, on the altar of the public welfare; of all local and party feelings, of all groundless jealousy, and of whatever can excite and keep alive divisions among us. Let us unite in providing for the public defence. Let us candidly come forward and repair any breach which may have been made in the Constitution, the fortress of our safety and union; and carefully set out and correct such errors, and supply such defects, as it shall be found to contain; not in a manner to promote any particular or favorite object, but so as to add to its strength and durability, that it may secure to unborn millions the blessings of peace and good government, and fix on a solid basis their liberty and independence.

Mr. HILLHOUSE then submitted the following amendments to the Constitution of the United States, which were read for consideration:

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both Houses concurring, That the following articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States; all or any of which articles, when ratified by three-fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution, viz:

Articles in addition to, and amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States pursuant to the fifth article of the original Constitution.

ARTICLE 1. After the third day of March, one thousand eight hundred and thirteen, the House of Representatives shall be composed of members chosen every year by the people of the several States: their Electors in each State shall have the qualifications requisite for Electors of the most numerous branch of the State Legislature: and their term of service shall expire on the first Tuesday of April in each year.

ART. 2. After the third day of March, one thousand eight hundred and thirteen, the Senators of the United States shall be chosen for three years; and their term of service shall expire on the first Tuesday of April.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be, into three classes. The seats of the first class shall be vacated at the expiration of the first year, of the second class at the expiration of the second year, and of the third class at the expiration of the third year, so that one-third may be chosen every year. Vacancies to be filled as already provided.

ART. 3. On the 3d day of March, one thousand eight hundred and thirteen, the President of the United States shall be appointed, and shall hold his office until the expiration of the first Tuesday of April, one thousand eight hundred and fourteen. And on the first Tuesday of April, one thousand eight hundred and fourteen and on the first Tuesday of April in each succeeding year, the President shall be appointed to hold his office during the term of one year. The mode of appointment shall be as follows:

In presence of the Senate and House of Represent

atives, each Senator belonging to the class whose term of service will first expire, and constitutionally eligible to the office of President, of which the House of Representatives shall be the sole judges, and shall decide without debate, shall, beginning with the first on the alphabet, and in their alphabetical order, draw a ball out of a box, containing the same number of uniform balls as there shall be Senators present and eligible, one of which balls shall be colored, the others white. The Senator who shall draw the colored ball shall be President. A committee of the House of Representatives, to consist of a member from each State, to be appointed in such manner as the House shall direct, shall place the balls in the box, shall shake the same so as to intermix them, and shall superintend the drawing thereof.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties thereof, if Congress be then in session, or, if not, as soon as they shall be in session, the President shall, in the manner before-mentioned, be appointed for the residue of the term. And until the disability be removed, or a President be appointed, the Speaker of the Senate shall act as President. And Congress may, by law, provide for the case of removal by death, resignation, or inability of the President, and vacancy in the office, or inability of the Speaker of the Senate; and such officer shall act accordingly, until the disability of the President be removed, or another be appointed.

The seat of a Senator who shall be appointed as President, shall thereby be vacated.

ART. 4. After the third day of March, one thousand eight hundred and thirteen, the compensation of the President shall not exceed fifteen thousand dollars a year.

ART. 5. After the third day of March, one thousand eight hundred and thirteen, the office of Vice President shall cease. And the Senate, on the same day in each year, when the President shall be annually appointed, shall choose a Speaker; and in the absence of the Speaker, or when he shall exercise the office of President, the Senate shall choose a Speaker *pro tempore*.

ART. 6. After the third day of March, one thousand eight hundred and thirteen, the President shall nominate, and, by and with the advice and consent of the Senate, and of the House of Representatives, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law. But Congress may, by law, vest the appointment of such officers as they think proper, in the President, by and with the advice and consent of the Senate; and of the inferior officers in the President alone, in the Courts of Law, or in the Heads of Departments. But no law vesting the power of appointment shall be for a longer term than two years. All proceedings on nominations shall be with closed doors, and without debate; but information of the character and qualifications of the person nominated shall be received.

ART. 7. After the third day of March, one thousand eight hundred and thirteen, the President shall have power to fill all vacancies that may happen during the recess of Congress, by granting commissions which shall expire at the end of their next session. No removal from office shall take place without the consent of the Senate and of the House of Representatives. But Congress may, by law, authorize the removal by the same power, as may, by law, be authorized to make the appointment. But in every case of misconduct in office, where the consent of the Senate, or of the Senate and House of Representatives, shall be necesary to a removal, the President, during the recess of Congress, may suspend the officer, and make a temporary appointment of a person to exercise the office, until the next meeting of Congress, and until a decision can be had by the Senate, or by the Senate and House of Representatives, as the case may be, on a question for the removal of the officer suspended. All proceedings respecting removal from office shall be had, without debate, upon the information and reasons which shall be communicated by the President, and with closed doors.

WEDNESDAY, April 13.

Agreeably to notice of yesterday, Mr. BRADLEY asked and obtained leave to bring in a bill to alter the time for the next meeting of Congress; and the bill was read, and ordered to the secoud reading.

Agreeably to notice of yesterday, Mr. SMITH of Maryland, asked and obtained leave to bring in a bill to revive and continue in force "An act declaring the assent of Congress to certain acts of the States of Maryland and Georgia;" which was read twice, by unanimous consent, and ordered to be engrossed and read a third time.

Mr. MITCHILL stated that the Senators and Representatives in Congress from the State of New York were requested, by a resolution of the Legislature of that State, to represent, in the most earnest manner, to the National Government, the exposed situation of the port of New York; and also the destitute condition of their seamen, and the danger of their migration to foreign countries for employment; and the resolution was read for consideration.

The bill, entitled "An act to alter and establish certain post roads," was read the second time and referred to Messrs. CRAWFORD, GREGG, GILMAN, ADAMS, and BRADLEY, to consider and report thereon.

On motion, by Mr. SMITH of Maryland,

Resolved That the committee to whom is referred the bill, from the House of Representatives, entitled "An act to alter and establish certain post roads," be directed to require from the Postmaster General information whether any, and, if any, what, appropriations will be necessary to carry into execution the said bill, if the same shall pass into a law.

The Senate resumed the second reading of the bill, entitled "An act concerning courts martial and courts of inquiry;" and, on motion, by Mr. ANDERSON, to add the following as section sixth:

"*And be it further enacted*, That no judge to whom application shall be made in manner provided by the first section of this act, shall authorize a subpœna to issue to summon a citizen to appear before any court martial, or court of inquiry, to give evidence, except in cases where the charge against an officer or soldier shall be for a breach of some one or more of the articles of war:"

It passed in the negative—yeas 13, nays 17, as follows:

YEAS—Messrs. Anderson, Crawford, Gilman, Good-

rich, Hillhouse, Maclay, Mathewson, Mitchill, Pickering, Reed, Sumter, Turner, and White.

NAYS—Messrs. Adams, Bradley, Condit, Gaillard, Giles, Gregg, Howland, Kitchel, Milledge, Pope, Robinson, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Tennessee, Thruston, and Tiffin.

And the PRESIDENT reported the bill to the House as amended, and it was ordered to the third reading as amended.

Mr. GREGG, from the committee, reported the bill to revive and continue in force "An act declaring the assent of Congress to certain acts of the States of Maryland and Georgia," correctly engrossed, and it was agreed, by unanimous consent, that the bill be now read the third time.

Resolved, That this bill pass, and that the title thereof be "An act to revive and continue in force 'An act declaring the assent of Congress to certain acts of the States of Maryland and Georgia."

Mr. SMITH of Maryland, presented the petition of sundry inhabitants of Charles county, in the State of Maryland, praying the establishment of a post office at a place called Cobbneck, in the said county; and the petition was read, and referred to Mr. CRAWFORD, and others, to whom was committed the bill, entitled "An act to alter and establish certain post roads," to consider and report thereon.

The bill for the relief of Joseph Summerl, Simon Philipson, William Hamon, Archibald McCall, and Isaac Clason, was read the second time, and referred to Messrs. ADAMS, BRADLEY, and REED, to consider and report thereon.

Agreeably to notice given yesterday, Mr. POPE asked and obtained leave to bring in a bill for the establishment of a turnpike company in the county of Alexandria, in the District of Columbia; and the bill was read, and ordered to the second reading.

THURSDAY, April 14.

Mr. BRADLEY requested, and by unanimous consent obtained, leave to bring in a bill to continue in force, for a limited time, "An act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction; and the bill was twice read by unanimous consent. On the question, Shall this bill be engrossed and read a third time? it was determined in the affirmative.

Mr. REED presented the petition of Nathaniel Brashears, praying remission of the forfeiture of his recognisance, entered into on a presentment of the grand jury for assault and battery, at the circuit court for the District of Columbia, in December term, 1805, for reasons stated in the petition; which was read, and referred to Messrs. REED, BRADLEY, and CRAWFORD, to consider and report thereon.

On motion of Mr. GILES, on behalf of the committee to whom was referred, on the 15th March last, the Message of the President of the United States, relative to public ground in and adjacent to the city of New Orleans, the committee was discharged.

Mr. SMITH, of Maryland, requested, and by unanimous consent obtained, leave to bring in a bill authorizing the Secretary of the Treasury to pay to the Comptroller of the Treasury, in trust, the amount of certain bills drawn by John Armstrong, Minister from the United States to the Court of France, on the Treasury of the United States; and the bill was read twice, by unanimous consent. On the question, Shall this bill be engrossed and read a third time? it was determined in the affirmative.

Mr. SMITH, of Maryland, gave notice that he should to-morrow ask leave to bring in a bill, in addition to the act, entitled "An act laying an embargo on all ships and vessels in the ports and harbors of the United States," and the several acts supplementary thereto, and for other purposes.

The bill to alter the time for the next meeting of Congress was read the second time, and ordered to be engrossed and read a third time.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of the legal representatives of Thomas Barclay, deceased," in which they request the concurrence of the Senate; which bill was read twice, by unanimous consent, and and referred to Messrs. MITCHILL, SMITH of Maryland, and WHITE, to consider and report thereon.

The bill, entitled "An act concerning courts-martial and courts of inquiry" was read the third time as amended. On the question, Shall this bill be read the third time as amended," it was determined in the affirmative—yeas 17, nays 12, as follows:

YEAS—Messrs. Adams, Bradley, Condit, Gaillard, Giles, Gregg, Howland, Kitchel, Milledge, Pope, Robinson, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Tennessee, Thruston, and Tiffin.

NAYS—Messrs. Anderson, Crawford, Gilman, Goodrich, Hillhouse, Maclay, Mitchill, Pickering, Reed, Sumter, Turner, and White.

FRIDAY, April 15.

A message from the House of Representatives notified the Senate of the death of JACOB CROWNINSHIELD, Esq., late a member of that House, and that his funeral will take place to-morrow morning, at 10 o'clock.

Mr. MITCHILL, from the committee to whom was referred the bill, entitled "An act for the relief of the legal representatives of Thomas Barclay, deceased," reported the bill without amendment; and, by unanimous consent, the bill was read the third time, and passed.

Mr. ANDERSON, from the committee appointed on the 4th instant on the subject, reported in part a bill to authorize the President of the United States, under certain conditions, to suspend the operation of the act laying an embargo on all ships and vessels in the ports and harbors of the United States, and the several acts supplementary thereto; and the bill was read, and ordered to the second reading.

The Senate resumed the second reading of the bill in relation to the Military Academy of the

United States; and it was agreed that the further consideration of the bill be postponed until the first Monday in December next.

The bill for the establishment of a turnpike company in the county of Alexandria, in the District of Columbia, was read the second time. On the question, Shall this bill be engrossed and read a third time? it was determined in the affirmative.

The bill to continue in force, for a limited time, "An act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction," was read the third time and passed.

The bill authorizing the Secretary of the Treasury to pay to the Comptroller of the Treasury, in trust, the amount of certain bills drawn by John Armstrong, Minister from the United States to the Court of France, on the Treasury of the United States, was read the third time and passed.

The bill to alter the time for the next meeting of Congress was read the third time, and the further consideration thereof postponed to Tuesday next.

On motion, by Mr. GILMAM,

Resolved, That the Senate will attend the funeral of Mr. CROWNINSHIELD to-morrow morning at 10 o'clock.

EMBARGO.

Agreeably to the notice given yesterday, Mr. SMITH, of Maryland, asked and obtained leave to bring in a bill in addition to the act, entitled "An act laying an embargo on all ships and vessels in the ports and harbors of the United States," and the several acts supplementary thereto, and for other purposes; and the bill was read, and ordered to the second reading. The bill is as follows:

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That during the continuance of the act laying an embargo on all ships and vessels in the ports and harbors of the United States, no vessels of any description whatever, and wherever bound, whose employment is confined to the navigation of bays, sounds, rivers, and lakes, within the jurisdiction of the United States, (packets, ferry-boats, and vessels, exempted from the obligation of giving any bond whatever, only excepted,) shall be allowed, to depart from any port of the United States, without having previously obtained a clearance, nor until the master or commander shall have delivered to the collector or surveyor of the port of departure, a manifest of the whole cargo on board, including articles of domestic growth or manufacture, as well as foreign merchandise. And it shall also be the duty of the owners, agents, or factors of every such vessel, to produce within one month thereafter, to the collector of the district from which the vessel departed, a certificate of the landing of the whole of such cargo in a port of the United States, within the bay, sound, rivers, or lakes, to which the navigation of such vessel is confined, signed by the collector or surveyor, of the port where the cargo shall have been landed.

SEC. 2. *And be it further enacted*, That if any vessel described in the next preceding section, shall depart from a port of the United States without a clearance, or before the manifest of the cargo shall have been delivered to the collector or surveyor, in the manner therein prohibited, or if a certificate of the landing of the cargo shall not be produced within the time and in the manner therein provided, such vessel and cargo shall be forfeited, and the owner or owners, consignee, agent, factors, freighters, master or skipper of such vessel, shall respectively forfeit and pay a sum not exceeding —— thousand dollars, nor less than —— thousand dollars: *Provided always*, That nothing herein contained shall be construed to bar or prevent the recovery of the penalty on the bond given for each vessel.

SEC. 3. *And be it further enacted*, That during the continuance of the act, laying an embargo on all ships and vessels in the ports and harbors of the United States, and of the several acts supplementary thereto, it shall be the duty of the master or person having charge or command of any vessel, flat, or boat, intended to that part of the river Mississippi, which lies between the southern boundary of the Mississippi Territory and the river Iberville, if going down the said river, to stop at Fort Adams, and if going up the river, to stop at Iberville, and at each place, as the case may be, to deliver to an inspector of the revenue, to be stationed there for that purpose, a manifest of the whole cargo on board, and also to produce within two months thereafter to the same officer, a certificate of the landing of the same in some port of the District of Mississippi, and within the jurisdiction of the United States; which certificate shall be signed by the collector or one of the surveyors of the District of Mississippi, or if the cargo shall be landed more than thirty miles from the place of residence of any such officer, by a State or Territorial judge, having jurisdiction at the place of such landing.

SEC. 4. *And be it further enacted*, That if any vessel, flat, or boat, shall enter that part of the river Mississippi, as prescribed in the next preceding section, without stopping and delivering a manifest in the manner therein provided, or if a certificate of the landing of the cargo, shall not be produced within the time and in the manner therein provided, such vessel, flat, or boat, and cargo, shall be forfeited, and the owner or owners, consignee, agent, factors, freighters, master, or skipper, of any such vessel, flat, or boat, shall respectively forfeit and pay a sum not exceeding —— dollars, nor less than —— dollars.

SEC. 5. *And be it further enacted*, That no ship or vessel, having any cargo whatever on board, shall, during the continuance of the act laying an embargo on all ships and vessels in the ports and harbors of the United States, be allowed to depart from any port of the United States for any other port or district of the United States, adjacent to the territories, colonies, or provinces of a foreign nation: nor shall any clearance be furnished to any ship or vessel bound as aforesaid, without special permission of the President of the United States. And if any ship or vessel shall, contrary to the provisions of that act, proceed to any port or district adjacent to the territories, colonies, or provinces of a foreign nation, such ship or vessel, with her cargo, shall be wholly forfeited; and if the same shall not be seized, the owner or owners, agents, factors, and freighters of such ship or vessel, shall for every such offence forfeit and pay ——; and the master of such ship or vessel, as well as all other persons who shall knowingly be concerned in such prohibited voyages, shall each respectively forfeit and pay —— for every such offence, whether the vessel be seized or not.

SEC. 6. *And be it further enacted*, That the commanders of the public armed vessels, and gunboats of the United States, shall, as well as commanders or masters of the revenue cutters and revenue boats, be authorized, and they are hereby authorized, to stop and examine any vessel, flat, or boat, either on the high seas or within the jurisdiction of the United States, which there may be reason to suspect to be engaged in any traffic or commerce, or in the transportation of merchandise of either domestic or foreign growth or manufacture, contrary to the provisions of this act, or of the act laying an embargo on all ships and vessels in the ports and harbors of the United States, or of any of the acts supplementary thereto; and if upon examination it shall appear that such vessel, flat, or boat, is thus engaged, it shall be the duty of the commander to seize every such vessel, flat, or boat, and to send the same to the nearest port of the United States for trial.

SEC. 7. *And be it further enacted*, That the Comptroller of the Treasury be, and he is hereby authorized to remit the duty accruing on the importation of goods of domestic produce, or which being of foreign produce, had been exported without receiving a drawback, which may have been or may be re-imported in vessels owned by citizens of the United States, and which having sailed subsequent to the first day of October last, and prior to the twenty-second day of December last, may be or have been stopped on the high seas by foreign armed vessels, and by reason thereof have returned, or may hereafter return into the United States, without having touched at any foreign port or place. And the said Comptroller is likewise authorized to direct the exportation bonds given for foreign merchandise exported with privilege of drawback, in such vessel, and re-exported in the same, in the manner aforesaid, to be cancelled, the duties on such re-importation being previously paid, and on such other conditions and restrictions as may be necessary for the safety of the revenue.

SEC. 8. *And be it further enacted*, That during the continuance of the act laying an embargo on all ships and vessels in the ports and harbors of the United States, no foreign ship or vessel shall go from one port in the United States to another; and should any foreign ship or vessel, contrary to this section, go from one port of the United States to another, the vessel with her cargo shall be wholly forfeited, and the owner or owners, agent, factors, freighters, and master of such ship or vessel, shall forfeit and pay a sum not exceeding —— dollars, nor less than —— dollars.

SATURDAY, April 16.

The Senate adjourned to twelve o'clock, and attended the funeral of the honorable JACOB CROWNINSHIELD. After which they returned to their Chamber, and the VICE PRESIDENT having retired for the remainder of the session, the Senate proceeded by ballot to the choice of a PRESIDENT *pro tempore*, as the Constitution provides; and the honorable SAMUEL SMITH was elected.

Ordered, That the Secretary wait on the President of the United States, and acquaint him that the Senate have, in the absence of the Vice President, elected the honorable SAMUEL SMITH their President *pro tempore;* and that the Secretary make a like communication to the House of Representatives.

Mr. ANDERSON, from the committee, reported a bill to authorize the President of the United States to suspend the operation of the act prohibiting the importation of certain goods, wares, and merchandise, and the acts supplementary thereto; and the bill was read and ordered to the second reading.

The bill to authorize the President of the United States, under certain conditions, to suspend the operation of the act laying an embargo on all ships and vessels in the ports and harbors of the United States, and the several acts supplementary thereto, was read the second time, as in Committee of the Whole, and amended. On motion to strike out of section 1, these words: "In the event of such peace, or suspension of hostilities, between the belligerent Powers of Europe, or of such changes in their measures affecting neutral commerce, as may render that of the United States sufficiently safe in the judgment of," and insert, after "States," in the 7th line, "if he shall judge the same expedient be, and;" it was determined in the negative—yeas 4, nays 24, as follows:

YEAS—Messrs. Goodrich, Hillhouse, Maclay, and Pickering.

NAYS—Messrs. Adams, Anderson, Condit, Crawford, Gaillard, Giles, Gilman, Gregg, Howland, Kitchel, Mathewson, Milledge, Mitchill, Pope, Reed, Robinson, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Tennessee, Sumter, Thruston, Tiffin, and Turner.

And the PRESIDENT reported the bill to the House amended. On the question, Shall this bill be engrossed and read a third time as amended? it was determined in the affirmative.

Mr. ADAMS, from the committee to whom was referred the bill for the relief of Joseph Summerl, Simon Philipson, William Hamon, Archibald McCall, and Isaac Clason, reported it without amendment; and on the question, Shall this bill be engrossed and read a third time? it was determined in the affirmative.

Mr. GREGG, from the committee, reported the bill for the establishment of a turnpike company in the county of Alexandria, in the District of Columbia, correctly engrossed; and the bill was read the third time and passed.

FOREIGN RELATIONS.

Mr. ANDERSON, from the committeee appointed the 4th instant, on the correspondence between Mr. Madison and Mr. Rose, relative to the attack made upon the frigate Chesapeake by the British ship of war Leopard; and, also, the communications made to the Senate, by the President of the United States, on 30th March last, made a further report; which was read for consideration; and 5000 copies ordered to be printed for the use of Congress. The report is as follows:

That, on a review of the several orders, decrees, and decisions of Great Britain and France, within the period of the existing war, it appears that, previous to the measures referred to in the letters from Mr. Erskine to the Secretary of State, and from M. Champagny to General Armstrong, various and heavy injuries have

been committed against the neutral commerce and navigation of the United States, under the following heads:

1st. The British order of June, 1803, unlawfully restricting the trade of the United States, with a certain portion of the unblockaded ports of her enemies, and condemning vessels with innocent cargoes, on a return from ports where they had deposited contraband articles.

2d. The capture and condemnation, in the British Courts of Admiralty, of American property, on a pretended principle, debarring neutral nations from a trade with the enemies of Great Britain, interdicted in time of peace. The injuries suffered by the citizens of the United States, on this head, arose, not from any public order of the British Council, but from a variation in the principle, upon which the Courts of Admiralty pronounced their decisions. These decisions have, indeed, again varied, without any new orders of council being issued; and in the higher Courts of Admiralty some of the decisions which had formed the greatest cause for complaint, have been reversed, and the property restored. There still remains, however, a heavy claim of indemnity for confiscations, which were made during the period of these unwarrantable decisions, and for which all negotiation has hitherto proved unavailing.

3d. Blockades notified to the Minister of the United States at London, and thence made a ground of capture, against the trade of the United States, in entire disregard of the law of nations, and even of the definition of legal blockades, laid down by the British Government itself. Examples of these illegitimate blockades will be found in the notifications of the blockade of May 16, 1806, of the coast from the river Elbe to Brest, inclusive; blockade of the 11th of May, 1807, expounded 19th June, 1807, of the Elbe, Weser, and Ems, and the coast between the same; blockade 11th May, 1807, of the Dardanelles and Smyrna; blockade of 8th January, 1808, of Carthagena, Cadiz, and St. Lucar, and of all the intermediate ports between Carthagena and St. Lucar, comprehending a much greater extent of coast than the whole British navy could blockade, according to the established law of nations.

4th. To these injuries, immediately authorized by the British Government, might be added other spurious blockades by British naval commanders, particularly that of the Island of Curracoa, which, for a very considerable period, was made a pretext for very extensive spoliations on the commerce of the United States.

5th. The British proclamation of October last, which makes it the duty of the British officers to impress, from American merchant vessels, all such of their crews as might be taken or mistaken for British subjects; those officers being the sole and absolute judges in the case.

For the decrees and acts of the French Government, violating the maritime law of nations, in respect to the United States, the committee refer to the instances contained in the report of the Secretary of State, January 25, 1806, to the Senate; in one of which, viz: a decree of the French General Ferrand, at St. Domingo, are regulations sensibly affecting the neutral and commercial rights of the United States.

The French act next in order of time, is the decree of November 21, 1806, declaring the British isles in a state of blockade, and professing to be a retaliation, on antecedent proceedings of Great Britain, violating the law of nations.

This decree was followed, first, by the British order of January, 1807, professing to be a retaliation on that decree, and subjecting to capture the trade of the United States, from the port of one belligerent, to the port of another; and, secondly, by the orders of November last, professing to be a further retaliation on the same decree, and prohibiting the commerce of neutrals, with the enemies of Great Britain, as explained in the aforesaid letter of Mr. Erskine.

These late British orders again, have been followed by the French decree of December 17, purporting to be a retaliation on the said orders, and to be put in force against the commerce of the United States, as stated in the aforesaid letter of M. Champagny.

The committee forbear to enter into a comparative view of those proceedings, of the different belligerent Powers, deeming it sufficient to present the materials, from which it may be formed. They think it their duty, nevertheless, to offer the following remarks, suggested by a collective view of the whole.

The injury and dangers resulting to the commerce of the United States, from the cause and increase of these belligerent measures, and from similar ones adopted by other nations, were such as first to induce the more circumspect of our merchants and ship-owners, no longer to commit their property to the high seas, and at length to impose on Congress the indispensable duty of interposing some legislative provision, for such an unexampled state of things.

Among other expedients, out of which a choice was to be made, may be reckoned:

1. A protection of commerce by ships of war.
2. A protection of it by self-armed vessels.
3. A war of offence as well as of defence.
4. A general suspension of foreign commerce.
5. An embargo on our vessels, mariners, and merchandise.

This last was adopted, and the policy of it was enforced, at the particular moment, by accounts quickly after confirmed, of the British orders of November, and by the probability that these would be followed, as has also happened, by an invigorated spirit of retaliation, in other belligerent Powers. The happy effect of the precaution is demonstrated by the well-known fact, that the ports of Europe are crowded with captured vessels of the United States, unfortunately not within the reach of the precaution.

With respect to a protection of our commerce by ships of war, it must be obviously impracticable, in any material degree, without a lapse of time, and an expense, which amounts to a prohibition of that resort; besides that, it would necessarily involve hostile collisions with one or more of the belligerent Powers.

Self-armed merchantmen would have the same tendency, at the same time, that they would be utterly inadequate to a security against the multiplied fleets and cruisers to be encountered.

An entire suspension of foreign commerce, as the resort in the first instance, would evidently have produced some inconveniences, not incident to the embargo, as it was modified. But the committee do not suppress their opinion, that, after a reasonable time, it may not improperly take the place of the embargo; in case of a protracted adherence of the belligerent Powers, to their destructive proceedings against our neutral commerce.

With respect to a resort to war, as a remedy for the evils experienced, the committee will offer no other reflection, than that it is in itself so great an evil, that the United States have wisely considered peace and

honest neutrality, as the best foundation of their general policy. It is not for the committee to say under what degree of aggravated injuries and sufferings, a departure from this policy may become a duty; and the most pacific nation find itself compelled to exchange for the calamities of war, the greater distresses of longer forbearance.

In the present state of things, the committee cannot recommend any departure from that policy which withholds our commercial and agricultural property from the licensed depredations of the great maritime belligerent Powers. They hope that an adherence to this policy will eventually secure to us the blessings of peace, without any sacrifice of our national rights; and they have no doubt that it will be supported by all the manly virtue which the good people of the United States have ever discovered, on great and patriotic occasions. But the committee would suggest, on this subject, that better councils in the belligerent Governments, producing a juster conduct towards neutral nations, would render a continuance of the embargo unnecessary, and that it will be a provident measure to vest in the Executive a power, in such an event, to suspend until the next session of Congress, wholly, or in part, the several acts prohibiting the departure of our vessels for foreign ports.

Although the committee have abstained from entering into any particular comparison of the proceedings of the French and British Governments towards the United States; they cannot reconcile, with their duty, or with the just sensibility of the nation, not to advert to the tenor and language of the late communications, made by the respective organs of those Governments.

In the letter of M. Champagny, the United States are not only threatened with confiscation, as the final destiny of American property, seized under the French decrees, unless disposition shall be manifested by them against Great Britain, satisfactory to France, but they are even declared, without reserve of any sort, to be actually in a state of war against Great Britain.

In the letter of Mr. Erskine to the Secretary of State, the United States are explicitly charged with justly subjecting their commerce to confiscations, under the British orders, by not opposing an effectual resistance against the decrees of France; in other words, by not making war against that nation, in case no other interposition should be effectual.

There are, in this exposition of the British orders, certain features which claim particular attention; among the regulations, of which they consist, it is provided, that the commerce of the United States, bound from their own ports to its legal and ordinary markets, shall pass through British ports, shall there, in all cases, take their clearances from British officers, shall, in some cases, obtain special licenses, and in others, pay a direct and avowed tax; thus putting the United States on a commercial footing, even worse than was allowed to British colonies, which were left free to carry their exports directly to foreign markets, in cases where an intermediate voyage to the parent country would be too oppressive. In the present case, not a single article is permitted to be sent from the United States to the most southern parts of Europe, without a previous voyage to Great Britain; and, in some instances, not without purchasing even that privilege, without paying a tribute to the British Treasury.

The committee have taken into consideration the documents relating to the attack on the frigate Chesapeake; but they have not deemed it their duty, in the actual posture of the subject, to make any other remark than, that it strengthens the motives of persevering in all the provisional and precautionary measures hitherto contemplated.

MONDAY April 18.

The bill in addition to the act, entitled "An act laying an embargo on all ships and vessels in the ports and harbors of the United States," and the several acts supplementary thereto, and for other purposes, was read the second time as in Committee of the Whole; and Mr. ANDERSON was requested to take the Chair; and, after debate, the PRESIDENT resumed the Chair, and Mr. ANDERSON reported sundry amendments; and the Senate having agreed thereto, and further amended the bill, on the question, Shall this bill be engrossed and read a third time? on request, by Mr. HILLHOUSE, it was agreed to take the question by yeas and nays; and on motion by Mr. POPE, it was agreed that the further consideration of the bill be postponed until to-morrow.

A message from the House of Representatives informed the Senate that the House agree to the amendments of the Senate to the bill, entitled "An act concerning public contracts," with amendments, in which they request the concurrence of the Senate. They have passed the bill sent from the Senate, entitled "An act for the establishment of a turnpike company in the county of Alexandria, in the District of Columbia," with an amendment, in which they request the concurrence of the Senate.

They have passed a bill, entitled "An act for the relief of Matthew Smith and Darius Gates, jointly, and Darius Gates separately;" also, a bill, entitled "An act to continue in force an act, entitled 'An act to extend jurisdiction in certain cases to the State judges and State courts, and for other purposes;" in which bills they request the concurrence of the Senate.

The two bills last brought up for concurrence were read and ordered to the second reading.

The bill to authorize the President of the United States, under certain conditions, to suspend the operation of the act laying an embargo on all ships and vessels in the ports and harbors of the United States, and the several acts supplementary thereto, was read the third time. On the question, Shall this bill pass? it was determined in the affirmative—yeas 24, nays 4, as follows:

YEAS—Messrs. Adams, Anderson, Condit, Crawford, Gaillard, Gilman, Gregg, Howland, Kitchel, Maclay, Mathewson, Milledge, Mitchill, Pope, Reed, Robinson, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Tennessee, Thruston, Tiffin, Turner, and White.

NAYS—Messrs. Goodrich, Hillhouse, Pickering, and Sumter.

The bill for the relief of Joseph Summerl, Simon Philipson, William Hamon, Archibald McCall, and Isaac Clason, was read the third time, and passed.

The Senate took into consideration the amendment of the House of Representatives to the bill, entitled "An act for the establishment of a turn-

pike company in the county of Alexandria, in the District of Columbia;" and concurred therein.

The Senate took into consideration the amendments to the bill, entitled "An act concerning public contracts;" and concurred therein.

Mr. TURNER gave notice that he should, tomorrow, ask leave to bring in a bill to make Plymouth, in North Carolina, a port of entry, and to change the name of the district of Nanjemoy to that of St. Mary's.

The bill to authorize the President of the United States to suspend the operation of the act prohibiting the importation of certain goods, wares, and merchandise, and the act supplementary thereto, was read the second time. On the question, Shall this bill be engrossed and read a third time? it was determined in the affirmative.

TUESDAY, April 19.

The bill to authorize the President of the United States to suspend the operation of the act prohibiting the importation of certain goods, wares, and merchandise, and the acts supplementary thereto, was read the third time, and passed.

The bill, entitled "An act to continue in force an act, entitled 'An act to extend jurisdiction in certain cases to the State judges and State courts, and for other purposes," was read the second time, and referred to Messrs. ANDERSON, MITCHILL, and POPE, to consider and report thereon.

The bill, entitled "An act for the relief of Matthew Smith and Darius Gates, jointly, and Darius Gates separately," was read the second time, and referred to Messrs. GOODRICH, SMITH, of New York, and MATHEWSON, to consider and report thereon.

Agreeably to notice given yesterday, Mr. TURNER asked and obtained leave to bring in a bill to make Plymouth, in North Carolina, a port of entry, and to change the name of the district of Nanjemoy to that of St. Mary's; and the bill was twice read by unanimous consent. On the question, Shall this bill be engrossed and read a third time? it was determined in the affirmative.

The Senate resumed, as in Committee of the Whole, the second reading of the bill in addition to the act, entitled "An act laying an embargo on all ships and vessels in the ports and harbors of the United States," and the several acts supplementary thereto, and for other purposes; and on motion, by Mr. MITCHILL, to strike out of section one, line ten, the word "port," and insert the word "district:" it was determined in the negative—yeas 9, nays 17, as follows:

YEAS—Messrs. Goodrich, Hillhouse, Mathewson, Mitchill, Pickering, Pope, Reed, Smith of New York, and Smith of Ohio.

NAYS—Messrs. Anderson, Condit, Crawford, Gaillard, Gilman, Gregg, Howland, Milledge, Kitchel, Maclay, Milledge, Robinson, Smith of Maryland, Smith of Tennessee, Sumter, Thruston, Turner, and White.

On motion, by Mr. WHITE, to strike out the first section of the bill, as follows:

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That, during the continuance of the act laying an embargo on all ships and vessels in the ports and harbors of the United States, no vessel, of any description whatever, and wherever bound, whose employment is confined to the navigation of bays, sounds, rivers, and lakes, within the jurisdiction of the United States, (packets, ferry boats, and vessels exempted from the obligation of giving any bond whatever, only excepted) shall be allowed to depart from any port of the United States without having previously obtained a clearance, nor until the master or commander shall have delivered to the collector or surveyor of the port of departure a manifest of the whole cargo on board, including articles of domestic growth, or manufacture, as well as foreign merchandise. And it shall also be the duty of the owners, agents, or masters, of every such vessel, to produce, within one month thereafter, to the collector of the district from which the vessel departed, a certificate of the landing of the whole of such cargo in a port of the United States, within the bay, sound, rivers, or lakes, to which the navigation of such vessels is confined, signed by the collector or surveyor of the port where the cargo shall have been landed:"

It was determined in the negative—yeas 6, nays 20, as follows:

YEAS—Messrs. Goodrich, Hillhouse, Mitchill, Pickering, Smith of Ohio, and White.

NAYS—Messrs. Anderson, Condit, Crawford, Gaillard, Gilman, Gregg, Howland, Kitchel, Maclay, Mathewson, Milledge, Pope, Reed, Robinson, Smith of Maryland, Smith of New York, Smith of Tennessee, Sumter, Thruston, and Turner.

On the question, Shall this bill be engrossed and read a third time as amended? it was determined in the affirmative—yeas 21, nays 6, as follows:

YEAS—Messrs. Adams, Anderson, Condit, Crawford, Gaillard, Gilman, Howland, Kitchel, Maclay, Mathewson, Milledge, Pope, Reed, Robinson, Smith of Maryland, Smith of New York, Smith of Tennessee, Sumter, Thruston, Tiffin, and Turner.

NAYS—Messrs. Goodrich, Hillhouse, Mitchill, Pickering, Smith of Ohio, and White.

A message from the House of Representatives informed the Senate, that the House have passed a bill, entitled "An act making provision for arming and equipping the whole body of the militia of the United States;" in which bill they request the concurrence of the Senate.

The bill last mentioned was twice read by unanimous consent, and referred to Messrs. ANDERSON, SUMTER, and ADAMS, to consider and make report thereon.

Mr. ANDERSON gave notice that he should tomorrow ask leave to bring in a bill for the relief of Richard Bland Lee.

The Senate resumed the third reading of the bill to alter the time for the next meeting of Congress, and the further consideration thereof was postponed until Thursday next.

Mr. CRAWFORD, from the committee to whom was referred the bill, entitled "An act to alter and establish certain post roads," reported the bill with amendments; which were read, and, after debate, the further consideration of this bill was postponed until the first Monday in December next.

Mr. REED, from the committee to whom his petition was referred, reported a bill for the relief of Nathaniel Brashears; which was read, and ordered to the second reading.

Mr. CRAWFORD gave notice that he should to-morrow ask leave to bring in a bill for establishing certain post roads.

Mr. POPE gave notice that he should to-morrow ask leave to bring in a bill to incorporate a company for opening the canal in the city of Washington.

Mr. GOODRICH, from the committee to whom was referred the bill, entitled "An act for the relief of Matthew Smith and Darius Gates, jointly, and Darius Gates, separately," reported it without amendment; and the bill was ordered to the third reading.

The following motion was submitted by Mr. WHITE, for consideration:

Resolved, That it is expedient to authorize the President of the United States to have manned and equipped for service, with all convenient despatch, the frigates and other vessels of war of the United States, to be used as, in his opinion, the circumstances of the country, and the conduct of foreign Powers towards the United States, may require.

WEDNESDAY, April 20.

Mr. MATHEWSON presented the memorial of the freemen of the town of Newport, in the State of Rhode Island, stating that, in the present perilous crisis of national affairs, our country may not be able much longer to preserve its pacific system, but, on the contrary, may soon be involved in hostilities; and remonstrating against the neglect of the fortifications of their port and harbor, as a national grievance, and asking redress, for reasons stated at large in their memorial; which was read, and referred to the Secretary of War.

Mr. ANDERSON, from the committee to whom was referred the bill, entitled "An act to continue in force an act, entitled 'An act to extend jurisdiction, in certain cases, to the State judges and State courts, and for other purposes," reported it without amendment, and the bill was ordered to the third reading.

The Senate took into consideration the motion submitted yesterday, to authorize the President of the United States to have manned and equipped the frigates and other vessels of war, to be used as, in his opinion, the circumstances of the country may require; and it was referred to Messrs. WHITE, ADAMS, and ANDERSON, to consider and report thereon.

Agreeably to notice given yesterday, Mr. ANDERSON asked and obtained leave to bring in a bill for the relief of Richard Bland Lee; and the bill was read, and ordered to the second reading.

Agreeably to notice given yesterday, Mr. POPE asked and obtained leave to bring in a bill to incorporate a company for opening the canal in the city of Washington; and the bill was read, and the consideration thereof postponed until the first Monday in December next.

A motion was made, by Mr. SMITH, of Ohio, that he be furnished with attested copies of such papers and documents as he may require of the Secretary of the Senate, in relation to the late inquiry into his conduct, and that he shall have leave to withdraw such papers as relate to John and Matthew Nimmo.

Mr. WHITE, from the committee to whom the subject was referred, by permission, reported a bill to authorize and require the President of the United States to cause to be prepared for service the frigates and other armed vessels of the United States; and the bill was read, and ordered to the second reading.

The bill in addition to the act, entitled "An act laying an embargo on all ships and vessels in the ports and harbors of the United States," and the several acts supplementary thereto, and for other purposes, was read the third time as amended. On the question, Shall this bill pass as amended? it was determined in the affirmative—yeas 21, nays 5, as follows:

YEAS—Messrs. Adams, Anderson, Condit, Crawford, Gaillard, Gilman, Gregg, Howland, Kitchel, Mathewson, Milledge, Pope, Reed, Robinson, Smith of Maryland, Smith of New York, Smith of Tennessee, Sumter, Thruston, Tiffin, and Turner.

NAYS—Messrs. Goodrich, Hillhouse, Mitchill, Pickering, and White.

On motion, by Mr. THRUSTON, it was agreed to reconsider the resolution of yesterday, for postponing, until Thursday next, the consideration of the bill for altering the time for the next meeting of Congress; and, on motion, by Mr. ANDERSON, to recommit the bill, it passed in the negative. On the question shall this bill pass? it was determined in the affirmative—yeas 18, nays 9, as follows:

YEAS—Messrs. Adams, Anderson, Condit, Gaillard, Gilman, Goodrich, Howland, Kitchel, Milledge, Mitchill, Pope, Reed, Robinson, Smith of Maryland, Smith of New York, Thruston, Tiffin, and White.

NAYS—Messrs. Crawford, Gregg, Hillhouse, Maclay, Mathewson, Pickering, Smith of Tennessee, Sumter, and Turner.

The bill, entitled "An act for the relief of Matthew Smith and Darius Gates, jointly, and Darius Gates, separately, was read the third time, and passed.

On motion, it was agreed, by unanimous consent, that the bill, entitled "An act to continue in force an act, entitled 'An act to extend jurisdiction in certain cases to the State Judges and State Courts, and for other purposes," be now read the third time.

Resolved, That this bill pass.

The bill to make Plymouth, in North Carolina, a port of entry, and to change the name of the district of Nanjemoy to that of St. Mary's, was read the third time, and passed.

The bill for the relief of Nathaniel Brashears was read the second time. On the question, Shall this bill be engrossed and read the third time? it was determined in the affirmative.

Mr. ANDERSON, from the committee to whom was referred the bill, entitled "An act making provision for arming and equipping the whole

body of the militia of the United States," reported it without amendment,

Ordered, That this bill pass to a third reading.

BANK OF THE UNITED STATES.

Mr. GREGG presented the memorial of the stockholders of the Bank of the United States, signed Samuel Breck, chairman, representing that, by an act of Congress, passed on the 25th of February, 1791, the subscribers to the capital stock of the said Bank, their successors, and assigns, were incorporated for a term of years, which act will expire on the 4th day of March, 1811; and praying a renewal of their charter, for reasons stated at large in their memorial; which was read, and referred to the Secretary of the Treasury, to consider and report thereon at the next session of Congress. The memorial is as follows:

To the Senate and House of Representatives of the United States of America in Congress assembled, the memorial of the Stockholders of the Bank of the United States respectfully showeth:

That, by an act of Congress, passed on the 25th of February, 1791, the subscribers to the capital stock of the Bank of the United States, their successors, and assigns, were incorporated for a term of years, which will expire on the fourth day of March, in the year one thousand eight hundred and eleven.

That, contemplating the extensive operations of the bank, the intimate connexion of the institution with the public credit and finances, and the dispersed and distant residence of many of the stockholders, your memorialists deem it a duty to the Government, and to the commercial world, as well as to themselves, to submit, at this period, to the Legislative consideration, the expediency of protracting the duration of their charter. Without an early assurance upon this subject, every motive of prudence and justice will enforce the adoption of adequate measures, to prevent the dangers and mischiefs of a sudden dissolution of the corporation. The different branches, as well as the principal bank, must immediately co-operate in those measures. The facilities now enjoyed for the collection of the revenue, and the payments of the public debts or engagements, will be unavoidably impaired. And it will readily be perceived, that the activity of a capital, amounting to ten millions of dollars, cannot possibly cease, without producing great disappointment and embarrassment in the trade and commerce of the Union.

That, while your memorialists use the precaution of the present address, they reflect with pleasure upon the honorable claim to the patronage of the Government, founded upon the public services which the institution has already performed: Thus,

It has enriched the Treasury, by the share which the Government subscribed to its capital stock; for the subscription was made through the medium of a loan from the bank itself, (obtained at an annual interest less than the amount of the annual dividend) and when a sale of stock was effected, the profit realized by the Government exceeded a sum of six hundred and fifty thousand dollars.

It has aided the Government to maintain inviolate the public faith and credit both at home and abroad; for it has, on various applications, advanced to the amount of many millions of dollars, (at an interest sometimes of six, and sometimes at five per cent.,) in anticipation of the public revenue.

It has enabled the Government to collect its revenue, and to perform its pecuniary engagements, with ease, economy, and security; for offices of Discount and Deposite have been established in every eligible position; not always for the general emolument of the institution, but sometimes, (on the suggestion of the Secretary of the Treasury) for the peculiar accommodation of the public. The great mass of revenue has been thus carefully collected, and the interest of the public debt has been punctually paid; while, with equal promptitude, the public money has been transferred from the bank to the offices, or from one office to another, in such proportions, and at such times, as the arrangements of the Government required. And these operations (manifestly hazardous, inconvenient, and expensive) have hitherto, been performed upon the responsibility of the institution, without a pecuniary compensation or charge.

That your memorialists, indulging in this retrospect, cannot be insensible to the advantages which they also have derived from a fiscal intercourse between the Government and the bank. It is not, however, the amount of the public deposite that has essentially contributed to those advantages; for the amount of the deposite so fluctuates, is liable to such changes of place, and, in its transfer, is attended with so much care and cost, that it can hardly be regarded as a profitable item in the estimates of a discount day. Nor are the advantages of public patronage discernible in the emoluments arising from the general business of the bank; for its dividends have always been moderate, (frequently less, and seldom more, than eight per cent. per annum) and usually inferior to the dividends of similar establishments. But your memorialists cheerfully acknowledge, that the confidence of the Government, founded upon a constant knowledge of the interior management and condition of the bank, has attracted the confidence of Europe, as well as of America, towards the institution; has conferred upon it a character of dignity and stability, and has enabled its directors to set an example of prudence, candor, and impartiality, honorable to themselves, and beneficial to the community.

That your memorialists presume not to enlarge upon the national policy of their institution, either with a view to a continuance of the blessings of peace, or to the possible vicissitude and exigence of war. The officers of State can best represent the public uses of a bank, upon extraordinary as well as ordinary occasions; and the wisdom of the Legislature will doubtless embrace in its decisions, all the considerations of present convenience and future safety. But, at a crisis of some apprehension and alarm, your memorialists respectfully accompany the expression of a cordial attachment to the honor, tranquillity, and happiness, of their country, with an assurance that the Government may confidently rely, in every emergency, upon the prompt and legitimate aid of the institution.

That, under these impressions, and with these dispositions, your memorialists solicit a renewal of their charter for an additional terms of years; and they are persuaded that the reasons which have been assigned will induce the Legislature to make an early and a favorable decision upon the subject.

Signed by order and on behalf of the general meeting of the stockholders of the Bank of the United States.

SAMUEL BRECK, *Chairman.*

PASCHALL HOLLINGSWORTH,
Secretary.

THURSDAY, April 21.

Mr. GREGG asked and obtained leave to bring in a bill for the relief of George Hunter; which was twice read by unanimous consent. On the question, Shall this bill be engrossed and read the third time? it was determined in the affirmative.

The bill to authorize and require the President of the United States to cause to be prepared for service the frigates and other armed vessels of the United States," was read the second time; and, on motion, to strike out of section 1, lines 3 and 4, the words "be, and he is hereby, authorized and required to:" it passed in the negative—yeas 12, nays 14, as follows:

YEAS—Messrs. Adams, Anderson, Gilman, Goodrich, Hillhouse, Mitchill, Pickering, Reed, Smith of Maryland, Sumter, Thruston, and White.

NAYS—Messrs. Condit, Crawford, Gaillard, Gregg, Howland, Kitchel, Maclay, Mathewson, Milledge, Pope, Robinson, Smith of Ohio, Tiffin, and Turner.

On the question, Shall this bill be engrossed and read a third time? it was determined in the affirmative.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act concerning invalid pensioners;" also, a bill, entitled "An act to establish certain post roads in the State of Georgia;" in which they request the concurrence of the Senate.

The bill brought up for concurrence entitled "An act concerning invalid pensioners," was twice read, by unanimous consent, and referred, together with the report of the Secretary of War, and the resolutions of the Legislature of the State of North Carolina, on the subject of invalid pensioners, to Messrs. MITCHILL, GREGG, and ANDERSON, to consider and report thereon.

The bill, entitled "An act to establish certain post roads in the State of Georgia," was read, and ordered to the second reading.

The bill, entitled "An act making provision for arming and equipping the whole body of the militia of the United States," was read the third time. On the question, Shall this bill pass? it was determined in the affirmative—yeas 19, nays 4, as follows:

YEAS—Messrs. Anderson, Crawford, Gaillard, Gilman, Goodrich, Hillhouse, Howland, Maclay, Milledge, Mitchill, Pope, Reed, Robinson, Smith of Maryland, Sumter, Thruston, Tiffin, Turner, and White.

NAYS—Messrs. Condit, Gregg, Kitchel, and Mathewson.

The bill for the relief of Richard Bland Lee was read the second time. On the question, Shall this bill be engrossed, and read a third time? it was determined in the negative. So the bill was lost.

The motion made yesterday, that the Secretary of the Senate deliver to Mr. SMITH of Ohio, attested copies of certain papers; also, the original papers mentioned therein; was considered and agreed to.

EXPORTATION OF FISH.

Mr. ADAMS, from the committee to whom was referred, on the 7th instant, the petition of a number of merchants of the town of Boston, praying liberty to export certain quantities of fish, made report; which was read for consideration. The report is as follows:

The petitioners represent that they have on hand a large quantity of dry and pickled fish, which, unless exported before the Summer heats, will be liable to perish. And they state the peculiar hardships to which they will be liable, under the operation of the embargo, by the necessary destruction of their property, while the rest of the community will be affected only so far as to interrupt their customary commerce.

The committee perceive, and regret, the extraordinary pressure with which this important national measure must operate on those citizens who hold perishable articles for exportation. But, as this is not exclusively the case with the petitioners, but extends to many other classes of citizens, and to other articles of exportation, and as both Houses of Congress have recently manifested the determination of adhering to the general policy of the embargo, for the present, as the only remaining hopes of the nation, for averting the aggravated evils of war, the committee do not perceive any admissible principle upon which the prayer of the petitioners can be granted.

As, however, a conditional power of suspending the embargo, in whole or in part, and under such restrictions as may be found necessary, has been given to the President of the United States, to be exercised during the recess of Congress, the committee believe that, if any circumstance should occur, which can justify a relaxation of the embargo, in any respect, the case of the petitioners will be among the first entitled to consideration and relief.

FRIDAY, April 22.

Mr. MITCHILL, from the committee to whom was referred the bill, entitled an act concerning invalid pensioners," reported it with amendments; which were read, and agreed to; and the bill ordered to the third reading as amended.

Mr. REED submitted the following for consideration:

Resolved, That the Secretary of the Senate be authorized to pay, out of the contingent fund of this House, to John Mathers, Francis Durity, and Tobias Simpson, the sum of —— dollars each; and to the Chaplain of this House ——, in addition to their usual compensations.

The bill, entitled "An act to establish certain post roads in the State of Georgia," was read the second time, and amended.

Ordered, That it pass to the third reading as amended.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act making appropriations for the support of an additional military force for the year 1808;" also, a bill, entitled "An act making an appropriation to supply a deficiency in an appropriation for the support of Government during the present year, and making an appropriation for defraying the expenses incident to the valuation of houses and lands, and the enumeration of slaves, within the United States;" in which bills they request the concurrence of the Senate.

The bill, entitled "An act making appropriations for the support of an additional military force for the year 1808," was twice read, by unanimous consent, and referred to Messrs. WHITE, ADAMS, and ANDERSON, to consider and report thereon.

The bill, entitled "An act making an appropriation to supply a deficiency in an appropriation for the support of Government during the present year, and making an appropriation for defraying the expenses incident to the valuation of houses and lands, and the enumeration of slaves, within the United States," was twice read, by unanimous consent, and referred to Messrs. REED, WHITE, and ANDERSON, to consider and report thereon.

Mr. REED, from the committee on the bill last mentioned, reported it without amendment; and it was agreed, by unanimous consent, that this bill be now read the third time.

Resolved, That this bill pass.

Mr. GREGG, from the committee, reported the amendments to the bill, entitled "An act concerning invalid pensioners," correctly engrossed; and, by unanimous consent, the bill was read the third time, as amended, and passed.

The bill for the relief of George Hunter was read the third time by unanimous consent, and paesed.

The bill to authorize and require the President of the United States to cause to be prepared for the service the frigates and other armed vessels of the United States, was read the third time. On the question, Shall this bill pass? it was determined in the affirmative—yeas 21, nays 5, as follows:

YEAS—Messrs. Adams, Anderson, Condit, Crawford, Gaillard, Gilman, Goodrich, Gregg, Hillhouse, Howland, Milledge, Mitchill, Pickering Pope, Reed, Robinson, Smith of Maryland, Sumter, Thruston, Tiffin, and White.

NAYS—Messrs. Kitchel, Maclay, Mathewson, Smith of New York, and Turner.

A member casually absent, when taking the yeas and nays on this bill, requested, and was permitted, by unanimous consent, to insert his vote in the affirmative, as it would make no alteration in the determination of the question.

Mr. GREGG, from the committee, reported the amendments to the bill, entitled "An act to establish certain post roads in the State of Georgia," correctly engrossed. The bill last mentioned was read, by unanimous consent, the third time, as amended, and passed.

A motion was made, by Mr. TIFFIN, for consideration, as follows:

Resolved, That the Secretary of the Senate do settle the account of John Smith, Senator of Ohio, from the period of his first appearing in the Senate, as well as his mileage, in coming to and going from the seat of Government.

SATURDAY, April 23.

Mr. WHITE, from the committee to whom was referred the bill, entitled "An act making appropriations for the support of an additional military force for the year 1808," reported the bill without amendment; and the bill was read the third time, and passed.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of
Representatives of the United States:

I transmit to both Houses of Congress a letter from the Envoy of His Britanic Majesty at this place, to the Secretary of State, on the subject of certain British claims to lands in the Territory of Mississippi, relative to which several acts have been heretofore passed by the Legislature.

TH. JEFFERSON.

APRIL 22, 1808.

The Message was read, and ordered to lie for consideration.

The Senate took into consideration the motion made yesterday, and amended it as follows: that the Secretary of the Senate do settle the account of JOHN SMITH, a Senator of Ohio, from the period of his first appearing in the Senate; and, on the question to agree thereto, it passed in the negative.

A message from the House of Representatives informed the Senate that the House have passed the bill, sent from the Senate, entitled "An act in addition to the act, entitled 'An act laying an embargo on all ships and vessels in the ports and harbors of the United States, and the several acts supplementary thereto, and for other purposes,'" with amendments; also, the bill, entitled "An act to make Plymouth, in North Carolina, a port of entry, and to change the name of the district of Nanjemoy to that of St. Mary's," with amendments;" in which amendments, respectively, they request the concurrence of the Senate.

The Senate took into consideration the amendments of the House of Representatives to the bill, entitled "An act in addition to the act, entitled 'An act laying an embargo on all ships and vessels in the ports and harbors of the United States,'" and the several acts supplementary thereto, and for other purposes;" and

Ordered, That they be referred to Messrs. ANDERSON, ADAMS, and GREGG, to consider and report thereon.

The Senate took into consideration the amendments of the House of Representatives to the bill, entitled "An act to make Plymouth, in North Carolina, a port of entry, and to change the name of the district of Nanjemoy to that of St. Mary's;" and concurred therein.

The motion made yesterday, that the Secretary of the Senate do pay, out of the contingent fund, to John Mathers, Francis, Durity, and Tobias Simpson, —— dollars each, and to the Chaplain, —— dollars, in addition to their several compensations, was read the second time.

Mr. ANDERSON asked and obtained leave to bring a bill for the relief of Richard Sparks; which was three times read by unanimous consent, and passed.

MONDAY, April 25.

A message from the House of Representatives informed the Senate that they concur in the bill sent from the Senate, entitled "An act authorizing the Secretary of the Treasury to pay to the Comptroller of the Treasury, in trust, the amount of certain bills drawn by John Armstrong, Minister from the United States to the Court of France, on the Treasury of the United States," with amendments; in which they request the concurrence of the Senate.

The Senate took into consideration the amendments to the bill last mentioned; and concurred therein.

Mr. ANDERSON, from the committee to whom was referred the amendments of the House of Representatives to the bill, entitled "An act in addition to an act, entitled 'An act laying an embargo on all ships and vessels in the ports and harbors of the United States, and the several acts supplementary thereto, and for other purposes," reported the amendments with amendments thereto; which were read and agreed to.

On motion, by Mr. CRAWFORD,

Resolved, That the Secretary of the Senate cause to be printed one hundred and twenty copies of the act laying an embargo, and the several acts supplementary thereto, and transmit them to the members of the Senate.

The bill for the relief of Nathaniel Brashears was read the third time, and the further consideration thereof postponed until the first Monday in November next.

On motion, by Mr. WHITE, it was agreed to suspend the twelfth rule for conducting business in the Senate until to-morrow. Whereupon, the motion made on the 22d instant was read the third time, amended, and agreed to, as follows:

Resolved, That the Secretary of the Senate be authorized to pay, out of the contingent fund of this House, to John Mathers, Francis, Durity, and Tobias Simpson, the sum of sixty dollars each; and to the Chaplain of this House one hundred dollars, in addition to their usual compensation.

A message from the House of Representatives informed the Senate that they have passed a bill, entitled "An act to make good a deficit in the appropriation of 1807, and to make a further appropriation for completing the south wing of the Capitol, and for other purposes;" in which they request the concurrence of the Senate.

The bill was twice read.

On motion, by Mr. REED, to strike out of the first section the following words: "for completing the wall of the President's house, planting the ground, so as to close this part of the expenditure, building a solid flight of steps to the principal door, and minor expenses, fourteen thousand dollars:" it passed in the negative—yeas 3, nays 18, as follows:

YEAS—Messrs. Anderson, Pickering, and Reed.

NAYS—Messrs. Adams, Condit, Crawford, Gaillard, Gilman, Goodrich, Gregg, Howland, Hillhouse, Mathewson, Milledge, Mitchill, Robinson, Smith of Maryland, Smith of New York, Sumter, Turner, and White.

On motion, by Mr. GREGG, to insert, at the end of the first section, these words: "For executing the work deficient in the interior of the south wing, and painting, eleven thousand five hundred dollars:" it passed in the affirmative—yeas 17, nays 4, as follows:

YEAS—Messrs. Adams, Condit, Gilman, Goodrich, Gregg, Howland, Mathewson, Milledge, Mitchill, Pickering, Robinson, Smith of Maryland, Smith of New York, Sumter, Thruston, Turner, and White.

NAYS—Messrs. Anderson, Crawford, Gaillard, and Reed.

And the bill having been further amended, the President reported it to the House accordingly, and it was agreed that the bill pass to the third reading as amended. The bill was then read a third time, and passed.

A message from the House of Representatives informed the Senate that they have passed a bill, entitled "An act to authorize and empower the President of the United States to exchange the lands whereon the fort and battery now stand in the town of Portland, for lands more suitable for fortification, and the protection of said harbor and town of Portland, in the district of Maine."

The bill last mentioned was read, and, by unanimous consent, a second time as in Committee of the Whole, and amended; and the President reported it to the House amended accordingly; on the question, Shall this bill pass to the third reading as amended? it was determined in the affirmative. The bill was then read the third time as amended, and passed.

On motion, by Mr. ADAMS.

Resolved, That there be paid to Samuel Eliot, jun., the sum of two hundred dollars for extra services during the present sesssion of Congress, on the inquiry into the conduct of John Smith, a Senator from the State of Ohio, as an alleged associate of Aaron Burr, to be paid from the appropriation made by law for the payment of expenses on the said inquiry.

The Senate adjourned to five o'clock this afternoon.

FIVE O'CLOCK, P. M.

A message from the House informed the Senate that the House agree to some, and disagree to others of the amendments of the Senate to the act entitled "An act to make good a deficit in the appropriation of eighteen hundred and seven, for completing the public buildings, and for other purposes."

The Senate proceeded to consider their amendment to the bill, entitled "An act to make good a deficit in the appropriation of eighteen hundred and seven, for completing the public buildings, and for other purposes," disagreed to by the House of Representatives; Whereupon,

Resolved, That they recede from their said amendment.

A message from the House of Representatives informed the Senate that the House have passed a bill entitled "An act supplemental to 'An act regulating the grants of lands in the Territory of Michigan," to which they desire the concurrence

of the Senate; they have passed a resolution for the appointment of a joint committee to notify the President of the United States of the intended adjournment of Congress, in which they desire the concurrence of the Senate.

The bill, entitled "An act supplemental to an act regulating the grants of lands in the Territory of Michigan," was read three times by unanimous consent, and passed.

The Senate proceeded to consider the resolution of the House of Representatives for the appointment of a joint committee to notify the President of the United States of the intended adjournment; and, it being suggested that the said resolution was incomplete,

Resolved, That the Senate do disagree thereto.

On motion,

Resolved, That Messrs. MITCHILL and CRAWFORD be a committee on the part of the Senate, with such as the House of Representatives may join, to wait on the President of the United States, and notify him that, unless he may have any further communications to make to the two Houses of Congress, they are ready to adjourn.

Ordered, That the Secretary acquaint the House of Representatives therewith, and request the appointment of a committee on their part.

A message from the House of Representatives informed the Senate that the House concur in the resolution of the Senate for the appointment of a joint committee to wait on the President of the United States and notify him of the intended recess, and have appointed a committee on their part.

Mr. MITCHILL, from the committee, reported that they had waited on the President of the United States, who informed them that he had no further communications to make to the two Houses of Congress; Whereupon, the President adjourned the Senate until the first Monday in November next.

TRIAL OF AARON BURR.

[Communicated to the Senate of the United States, on the 23d of November, 1807.]

To the Senate and House of Representatives of the United States of America:

Agreeably to the assurance given in my message at the opening of the present session of Congress, I now lay before you a copy of the proceedings and of the evidence exhibited on the arraignment of Aaron Burr and others, before the circuit court of the United States held in Virginia, in the course of the present year, in as authentic form as their several parts have admitted.

TH. JEFFERSON.

NOVEMBER 23, 1807.

At a court of the United States for the fifth circuit in the Virginia District, commenced and holden at the Capitol, in the city of Richmond, on Friday, the twenty-second day of May, in the year of our Lord one thousand eight hundred and seven, and of the independence of the United States the thirty-second.

VIRGINIA DISTRICT:

In the Circuit Court of the United States of America, in and for the fifth circuit and Virginia district.

The grand inquest of the United States of America for the Virginia district, upon their oaths do present, that Aaron Burr, late of the city of New York, and State of New York, attorney-at-law, being an inhabitant of, and residing within the United States, and under the protection of the laws of the United States, and owing allegiance and fidelity to the same United States, not having the fear of God before his eyes, nor weighing the duty of his said allegiance, but being moved and seduced by the instigation of the devil, wickedly devising and intending the peace and tranquillity of the said United States to disturb, and to stir, move, and excite insurrection, rebellion, and war against the said United States, on the tenth day of December, in the year of Christ one thousand eight hundred and six, at a certain place called and known by the name of Blannerhasset's island, in the county of Wood, and district of Virginia aforesaid, and within the jurisdiction of this court, with force and arms, unlawfully, falsely, maliciously, and traitorously did compass, imagine, and intend to raise and levy war, insurrection, and rebellion against the said United States; and in order to fulfil and bring to effect the said traitorous compassings, imaginations, and intentions of him, the said Aaron Burr, he, the said Aaron Burr, afterwards, to wit, on the said tenth day of December, in the year one thousand eight hundred and six aforesaid, at the said island, called Blannerhasset's island as aforesaid, in the county of Wood aforesaid, in the district of Virginia aforesaid, and within the jurisdiction of this court, with a great multitude of persons, whose names at present are unknown to the grand inquest aforesaid, to a great number, to wit, to the number of thirty persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, swords, and dirks, and other warlike weapons, as well offensive as defensive, being then and there unlawfully, maliciously, and traitorously assembled and gathered together, did falsely and traitorously assemble and join themselves together against the said United States, and then and there with force and arms did falsely and traitorously, and in a warlike and hostile manner, array and dispose themselves against the said United States; and then and there, that is to say, on the day and in the year aforesaid, at the island aforesaid, commonly called Blannerhasset's island, in the county aforesaid of Wood, within the Virginia district, and the jurisdiction of this court, in pursuance of such their traitorous intentions and purposes aforesaid, he, the said Aaron Burr, with the said persons so as aforesaid traitorously assembled and armed, and arrayed in manner aforesaid, most wickedly, maliciously, and traitorously did ordain, prepare, and levy war against the said United States, contrary to the duty of their said allegiance and fidelity, against the Constitution, peace, and dignity of the said United States, and against the form of the act of the Congress of the said United States in such case made and provided.

And the grand inquest of the United States of America for the Virginia district, upon their oaths aforesaid, do further present, that the said Aaron Burr, late of the city of New York, and State of New York, attorney-at-law, being an inhabitant of and residing within the United States, and under the protection of the laws of the United States, and owing allegiance and fidelity to the same United States, not having the fear of God before his eyes, nor weighing the duty of his said allegiance, but being moved and seduced by the instigation of the devil, wickedly devising and intending the peace and tranquillity of the said United States to disturb, and to stir, move, and excite insurrection, rebellion, and war against the said United States, on the eleventh day of December, in the year of our Lord one thousand eight hundred and six, at a certain place called

and known by the name of Blannerhasset's island, in the county of Wood, and district of Virginia aforesaid, and within the jurisdiction of this court, with force and arms, unlawfully, falsely, maliciously, and traitorously did compass, imagine, and intend to raise and levy war, insurrection, and rebellion against the said United States, and in order to fulfil and bring to effect the said traitorous compassings, imaginations, and intentions of him, the said Aaron Burr, he, the said Aaron Burr, afterwards, to wit: on the said last mentioned day of December, in the year one thousand eight hundred and six aforesaid, at a certain place commonly called and known by the name of Blannerhasset's island, in the said county of Wood, in the district of Virginia aforesaid, and within the jurisdiction of this court, with one other great multitude of persons, whose names at present are unknown to the grand inquest aforesaid, to a great number, to wit, to the number of thirty persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, swords, and dirks, and other warlike weapons, as well offensive as defensive, being then and there unlawfully, maliciously, and traitorously assembled and gathered together, did falsely and traitorously assemble and join themselves together against the said United States, and then and there with force and arms did falsely and traitorously, and in a warlike and hostile manner, array and dispose themselves against the said United States; and then and there, that is to say, on the day and in the year last mentioned, at the island aforesaid, in the county of Wood aforesaid, in the Virginia district, and within the jurisdiction of this court, in pursuance of such their traitorous intentions and purposes aforesaid, he, the said Aaron Burr, with the said persons, so as aforesaid, traitorously assembled and armed, and arrayed in manner aforesaid, most wickedly, maliciously, and traitorously did ordain, prepare, and levy war against the said United States; and further to fulfil and carry into effect the said traitorous compassings, imaginations, and intentions of him, the said Aaron Burr, against the said United States, and to carry on the war thus levied as aforesaid against the said United States, the said Aaron Burr, with the multitude last mentioned, at the island aforesaid, in the said county of Wood, within the Virginia district aforesaid, and within the jurisdiction of this court, did array themselves in a warlike manner, with guns and other weapons, offensive and defensive, and did proceed from the said island down the river Ohio, in the county aforesaid, within the Virginia district, and within the jurisdiction of this court, on the said eleventh day of December, in the year one thousand eight hundred and six aforesaid, with the wicked and traitorous intention to descend the said river and the river Mississippi, and by force and arms traitorously to take possession of a city commonly called New Orleans, in the Territory of Orleans, belonging to the United States, contrary to the duty of their said allegiance and fidelity, against the Constitution, peace, and dignity of the said United States, and against the form of the act of Congress of the United States in such cases made and provided.

HAY, *Attorney of the United States for the Virginia district.*

A true bill: JOHN RANDOLPH.

THURSDAY, *May* 28.

This day came the attorney for the United States and Aaron Burr, and, by consent of the said Aaron Burr, it is considered that he enter into a recognisance in the sum of ten thousand dollars, and give one or more securities in the like sum, with condition for his personal appearance before this court on to-morrow, then and there to answer such charges as shall be exhibited against him on behalf of the United States, and not to depart without the leave of the said court. Whereupon the said Aaron Burr, Luther Martin, Thomas Taylor, John G. Gamble, and William Langbourne, here in court acknowledge themselves to be indebted to the United States as follows: the said Aaron Burr in the sum of ten thousand dollars, and the said Luther Martin, Thomas Taylor, John G. Gamble, and William Langbourne, in the sum of two thousand five hundred dollars each, of their respective goods and chattels lands and tenements, to be rendered for the use of the said United States; yet upon this condition, that if the said Aaron Burr shall make his personal appearance before this court to-morrow, then and there to answer such charges as shall be exhibited against him on behalf of the United States, and shall not depart thence without the leave of the said court, then this recognisance is to be void.

FRIDAY, *May* 29.

Aaron Burr this day appeared in court, in compliance with his recognisance entered into yesterday.

SATURDAY, *June* 13.

On the motion of Aaron Burr, and for reasons appearing to the court, it is ordered that a *subpœna duces tecum* be awarded to summon the President of the United States, or such of the Secretaries of the Departments, as may have the papers hereinafter mentioned, or any of them with their keeping; to bring forthwith to the court a letter from General Wilkinson to the President of the United States, dated the 21st day of October, 1806, as mentioned in the President's Message of the 22d day of January, 1807, to both Houses of Congress; together with the documents accompanying the same letter, and a copy of the answer of said Thomas Jefferson, if any one by his authority, to the said letter, and the military and naval orders given by the President of the United States, through the Departments of War and of the Navy, to the officers of the army and navy at or near the New Orleans stations, touching or concerning the said Burr or his property.

WEDNESDAY, *June* 24.

The grand jury this day appeared in court, and presented—

"An indictment against Aaron Burr, for treason—a true bill.

"An indictment against Aaron Burr, for a misdemeanor—a true bill."

And the said grand jury again retired.

On the motion of George Hay, attorney for the United States for this district, it is ordered that Aaron Burr, who is present in court, be committed to the custody of the marshal of this district, to be by him safely kept until discharged by due course of law.

FRIDAY, *June* 26.

We, who are counsel in the defence of Colonel Aaron Burr, at the suit of the United States, beg leave to represent to the court, that, in pursuance of our duty to him, we have visited him in his confinement in the city jail; that we could not avoid remarking the danger which will most probably result to his health from the situation, inconveniences, and circumstances attending the place of his confinement; but we cannot forbear to declare our conviction, that we ourselves cannot freely and fully perform what we have undertaken for his defence, if he remains in the jail aforesaid, deprived as he is of a room to himself; it being scarcely possible for us to consult with him upon the various necessary occasions which must occur. From all which we believe that he will be deprived of that assistance from counsel which is given to him by the Constitution of the United States, unless he be removed.

Sworn to in open court by

EDMUND RANDOLPH,
JOHN WICKHAM,
BENJAMIN BOTTS.

WILLIAM MARSHALL, *Clerk.*

Whereupon, it is ordered that the marshal of this district do cause the front room of the house now occupied by Luther Martin, Esq., which room has been and is used as a dining-room, to be prepared for the reception and safekeeping of Colonel Aaron Burr, by securing the shutters to the windows of the said room by bars, the door by a strong bar or padlock; and that he employ a guard of seven men, to be placed on the floor of the adjoining unfinished house, and on the same story with the before described front room, and also at the door opening into the said front room; and, upon the marshal's reporting to the court that the said room has been so fitted up, and the guard employed, that then the said marshal be directed, and he is hereby directed, to remove to the said room the body of the said Aaron Burr from the public jail, there to be by him safely kept.

RICHMOND, *July* 26, 1807.

SIR: The question submitted to me, whether the house now occupied by Mr. L. Martin, counsel for Colonel Burr, a room or rooms may be so prepared as to form a place of security against escape, I have considered; and, on inspection of the premises, I am of opinion that if the shutters of the windows of the second or any higher story be secured by bars, the door by a strong bar or padlock, and if a guard be stationed on the floor of the adjoining house, and also at the door of the above rooms, no person can escape therefrom without risk of his life.

B. HENRY LATROBE.
Surveyor of the public buildings of the United States.

THE MARSHAL OF THE UNITED STATES.

District of Virginia.

Aaron Burr, late of the city of New York, and State of New York, attorney-at-law, who stands indicted for treason, was this day brought to the bar in custody of the marshal of this district, and thereof arraigned, and pleaded not guilty to the indictment, and for his trial put himself upon God and the country; whereupon he is remanded to jail. And as the trial of the said Aaron Burr cannot be had in the county of Wood, where the offence is alleged to have been committed, without great inconvenience, it is ordered that a *venire facias* issue to the marshal of this district to be directed, commanding him to summon forty-eight fit persons, qualified as the law directs, twelve of whom from the said county of Wood, to appear here on the third day of August next, as a *venire* for the trial of the said Burr.

IN COUNCIL, MONDAY, *June* 29, 1807.

The board being informed that an affidavit has been filed in the circuit court of the United States for the Virginia district, which states that the jail for the county of Henrico and city of Richmond is inconvenient and unhealthy, and so crowded with State offenders and debtors that there are no private apartments therein for the reception of persons charged with offences against the laws of the United States, it is therefore advised that the Governor be requested to tender to said court (through the Federal attorney of the district of Virginia) apartments in the third story of the public jail and penitentiary house, for the reception of such persons as shall be directed, under the authority of the United States, to be confined therein.

Extract from the minutes.

DANIEL L. HILTON,
Clerk of the Council.

Which tender the court doth accept for the purposes above mentioned.

COUNCIL CHAMBER,
TUESDAY, *June* 30, 1807.

SIR: In pursuance of an advice of the Council of State, I beg leave, through you, to inform the circuit court of the United States now sitting, that any persons who may be confined in the jail and penitentiary house, on the part of the United States, will be considered as in the custody and under the sole control of the marshal of the district; that he will have authority to admit any person or persons to visit the confined that he may think proper; and that he will be authorized to select, for the purposes aforesaid, any apartments in the penitentiary, now unoccupied, that he may deem most conducive to safety, health, and convenience.

I am, with great respect, sir, your obedient servant,

W. H. CABELL.

In consequence of the offer made by the Executive of the apartments in the third story of the penitentiary and State prison for persons who may be confined therein, under the authority of the United States, and of the foregoing letter from the Governor of this Commonwealth, it is ordered, on the motion of the attorney of the United States, that, so soon as the apartments in the second story of the public jail and penitentiary shall be fit for the reception and safekeeping of Aaron Burr, he be removed thereto, and safely kept therein by the marshal until the 2d day of August next, when he shall be brought back to the prison where he is now placed, there to be guarded in like manner as at present, until the further order of the court.

And, at a court of the United States for the fifth circuit and Virginia district, continued by adjournment, and held at the Capitol, in the city of Richmond, on Monday, the third day of August, one thousand eight hunded and seven, Aaron Burr, late of the city of New York, and State of New York, attorney-at-law, who stands indicted for treason, was this day again brought to the bar in custody of the marshal of this district.

MONDAY, *August* 10.

Aaron Burr, being brought into court, acknowledged that he had received, according to law, a copy of the indictment against him for high treason in this court, a list of the jury, and a list of one hundred and thirty-one witnesses, in his case, mentioning the names and place of abode of such witnesses and jurors, three entire days antecedent to this day; and he consents to waive all advantage and objection, in point of form in the delivery thereof, and all exception to any mistake, omission, or deficiency in the names of the jurors or witnesses, and the description of their places of residence, or defect in not stating the residence of any of the witnesses.

Aaron Burr, late of the city of New York, and State of New York, attorney-at-law, who stands indicted for treason, was this day brought to the bar in custody of the marshal of this district; and thereupon the names of the *venire*, summoned in pursuance of the *venire facias*, awarded in this cause, being called, Richard E. Parker, David Lambert, Hugh Mercer, and Edward Carrington, were accepted by the prisoner, and sworn.

TUESDAY, *August* 11.

Aaron Burr, late of the city of New York and State of New York, attorney-at-law, who stands indicted for treason, was this day brought to the bar in custody of the marshal of this district.

In consequence of challenges to the persons summoned, as a *venire* for the trial of Aaron Burr, who stands indicted for treason, there is a defect of jurors for the said trial; it is therefore ordered that the marshal of this district return to the court at twelve o'clock on Thursday next, forty-eight jurymen *de talibus circumstantibus* to complete the pannel of the said jury.

MONDAY, *August* 17.

Aaron Burr, being brought into court, acknowledges that he has received, according to law, a list of four witnesses in his case, in addition to the list heretofore furnished him, mentioning the names and places of abode of such witnesses, three entire days antecedent to this day; and he consents to waive all advantage and objection in point of form in the delivery thereof; and all exception to any mistake, omission, or deficiency in the names of the witnesses, and the description of their places of residence or defect in not stating the residence of any of the witnesses.

Aaron Burr, late of the city of New York, and State of New York, attorney-at-law, who stands indicted for treason, was this day again brought to the bar in custody of the marshal of this district and thereupon the names of the persons summoned in pursuance of the process awarded in this cause being called, Christopher Anthony, James Sheppard, Reuben Blakeley, Benjamin Graves, Miles Bott, Henry E. Coleman, John M. Sheppard, and Richard Curd, who, being elected, tried, and sworn the truth of, and upon the premises to speak, together with Richard E. Parker, David Lambert, Hugh Mercer, and Edward Carrington, sworn on Monday last, completed the jury for the trial of the said indictment.

TUESDAY, *September* 1.

Aaron Burr, late of the city of New York, and State of New York, attorney-at-law, who stands indicted for treason, was this day again brought to the bar in custody of the mashal of this district and the jury sworn in this cause having heard the evidence, upon their oath do say, that the said Aaron Burr is not guilty of the treason aforesaid as in pleading he hath alleged, and thereupon proclamation was made as the manner is.

THURSDAY, *September* 3.

Ordered, That Aaron Burr, against whom a indictment was lately depending in this court for treason, and upon which the jury on Tuesday last brought in a verdict of not guilty, be acquitted and discharged of the said offence, and go thereof without day. And it is ordered, that the said Aaron Burr enter into a recognisance himself in the sum of five thousand dollars, and give two more securities in the sum of five thousand dollars for the said Burr's appearance before the court to-morrow, then and there to answer an indictment against him for a misdemeanor. Whereupon the said Aaron Burr acknowledged himself to be indebted to the United States in the sum five thousand dollars of his lands and tenemen goods and chattels, to be levied, and to the United States rendered: yet upon this condition, that, the said Aaron Burr shall make his personal appearance before this court to-morrow, at twelve o'clock, then and there to answer the said indictment for a misdemeanor, and shall not depart thence without leave of the said court, or un discharged by due course of law, then this recognisance to be void.

SATURDAY, *September* 5.

William Langbourne and Jonathan Dayton here in court, acknowledge themselves to be

ebted to the United States in the sum of five thou-
nd dollars of their lands and tenements, goods
nd chattels, to be levied, and to the United States
endered: yet upon this condition, that, if Aaron
urr shall make his personal appearance here be-
re the judges of this court, at ten o'clock on
onday next, to answer an indictment against
im for a misdemeanor, and shall not depart thence
ithout leave of the said court, or until discharged
y due course of law, then this recognisance is to
e void.

District of Virginia, *to wit:*

ircuit Court of the United States of America for the fifth circuit and district of Virginia.

The grand inquest of the United States of
merica, in and for the body of the district of Vir-
nia, upon their oath do present that Aaron Burr,
te of the city of New York, and district of New
ork, attorney-at-law, did, on the tenth day of
ecember, in the year of our Lord one thousand
ght hundred and six, within the jurisdiction of
e United States, to wit, at a certain island in
e river Ohio, called Blannerhasset's island, in
e county of Wood, within the district of Vir-
nia aforesaid, and within the jurisdiction of this
urt, with force and arms, begin a certain mili-
ry expedition to be carried on from thence
ainst the dominions of a foreign Prince, to wit,
e dominions of the King of Spain, the said Uni-
d States then and there being at peace with the
id King of Spain, against the form of the stat-
e in such case made and provided, to the evil
ample of all others in like case offending, and
ainst the peace of the said United States and their
gnity; and the jurors aforesaid, upon their said
th, do further present, that the said Aaron Burr,
erwards, to wit, on the said tenth day of De-
mber, in the year of our Lord one thousand
ght hundred and six, and within the jurisdiction
the said United States, to wit, at a certain island
the river Ohio, called Blannerhasset's island,
the county of Wood, in the district of Virginia
resaid, and within the jurisdiction of this court,
th force and arms did set on foot a certain mil-
ry enterprise, to be carried on from thence
ainst the territory of a foreign Prince, to wit,
e territory of the King of Spain, the said United
ates then and there being at peace with the
id King of Spain, against the form of the stat-
e in such case made and provided, to the evil
ample of all others in like case offending, and
ainst the peace of the said United States and their
gnity; and the jurors aforesaid, upon their oath
further present, that the said Aaron Burr, af-
erwards, to wit, on the said tenth day of Decem-
r, in the year of our Lord one thousand eight
undred and six, within the jurisdiction of the
id United States, to wit, at a certain island in
river Ohio, called Blannerhasset's island, which
n the county of Wood, in the district of Vir-
ia aforesaid, and within the jurisdiction of this
rt, did, with force and arms, set on foot a cer-
n other military enterprise, to be carried on from
nce against the territory of a foreign Prince,
wit, against the province of Mexico, in North America, the said province of Mexico then and there being the territory of the King of Spain, and the said King of Spain then and there being at peace with the said United States, against the form of the statute in such case made and provided, to the evil example of all others in like case offending, and against the peace of the said United States and their dignity; and the jurors aforesaid, upon their oath, do further present, that the said Aaron Burr, afterwards, to wit, on the said tenth day of December, in the year of our Lord one thousand eight hundred and six, within the jurisdiction of the said United States, to wit, at Blannerhasset's island, in the river Ohio, which island is in the county of Wood, in the district aforesaid, and within the jurisdiction of this court, did, with force and arms, provide the means, to wit, boats, men, provisions, fire-arms, gunpower, bullets, leaden bars, and other military munition, for a certain other military enterprise to be carried on from thence against the dominions of a foreign Prince, to wit, against the dominions of the King of Spain, the said United States then and there being at peace with the said King of Spain, against the form of the statute in such case made and provided, to the evil example of all others in like case offending, and against the peace of the said United States and their dignity; and the jurors aforesaid, upon their said oath, do further present, that the said Aaron Burr, afterwards, to wit, on the said tenth day of December, in the year of our Lord one thousand eight hundred and six, within the jurisdiction of the said United States, to wit, at an island in the river Ohio, called Blannerhasset's island, in the county of Wood, and district of Virginia, and within the jurisdiction of this court, did, with force and arms, prepare the means, to wit, boats, men, provision, fire-arms, gunpowder, bullets, leaden bars, and other military munition, for a certain other military expedition, to be carried on from thence against the province of Mexico in North America, the said province of Mexico then and there being the territory of a foreign Prince, to wit, the territory of the King of Spain, and the said United States then and there being at peace with the said King of Spain, against the form of the statute in such case made and provided, to the evil example of all others in like case offending, and against the peace of the said United States and their dignity; and the jurors aforesaid, upon their said oath, do further present, that the said Aaron Burr, afterwards, to wit, on the said tenth day of December, in the year of our Lord one thousand eight hundred and six, within the jurisdiction of the said United States, to wit, at an island in the river Ohio, called Blannerhasset's island, in the county of Wood, and district of Virginia aforesaid, and within the jurisdiction of this court, did, with force and arms, provide the means, to wit, boats, men, provisions, fire-arms, gunpowder, balls, leaden-bars, and other military munition, for a certain other military expedition to be carried on from thence against the dominions of some foreign State, to the jurors aforesaid yet unknown, with whom the United States were then and there at peace, against the form of the statute in such

case made and provided, to the evil example of all others in like case offending, and against the peace of the said United States and their dignity; and the jurors aforesaid, upon their said oath, do further present that the said Aaron Burr, afterwards, to wit: on the said tenth day of December, in the year of our Lord one thousand eight hundred and six, within the jurisdiction of the said United States, to wit, at Blannerhasset's island, in the river Ohio, in the county of Wood and district of Virginia aforesaid, and within the jurisdiction of this court, did, with force and arms, set on foot a certain other military enterprise, to be carried on from thence again the dominions of some foreign State, to the jurors aforesaid yet unknown, with whom the United States were then and there at peace, against the form of the statute in such case made and provided, to the evil example of all others in like case offending, and against the peace of the said United States and their dignity.

GEORGE HAY,
Of the city of Richmond, attorney of the U. S. for Virginia district, prosecutor.

A true bill: JOHN RANDOLPH.

MONDAY, *September* 7.

THE UNITED STATES *vs.* AARON BURR. } *Upon an indictment for a misdemeanor.*

This day came as well George Hay, general attorney for the United States for this district, as the defendant by his attorney; and thereupon the said defendant saith that he is not guilty of the misdemeanor for which he stands indicted, and of this he putteth himself upon the country, and the attorney for this district likewise.

TUESDAY, *October* 20.

THE UNITED STATES *vs.* AARON BURR. } *Upon an indictment for a misdemeanor*

The jury sworn in this case having, on the fifteenth day of the last month, brought in a verdict of not guilty, it is ordered that the said Aaron Burr be acquitted of the offence aforesaid, and go thereof without day.

On the motion of Aaron Burr, who is confined in the jail of Henrico county as a debtor, it is ordered that a writ of *habeas corpus* be awarded to the sheriff of said county to be directed, to cause him to bring forthwith to this court the body of the said Aaron Burr.

The sheriff of Henrico, by virtue of a writ of *habeas corpus* to him directed, this day produced in court the body of Aaron Burr detained in his custody on civil process; whereupon, it is ordered that the said Aaron Burr be committed to the custody of the marshal, to be by him safely kept until he shall be transmitted to the State of Ohio, there to be tried for a misdemeanor against the United States, in beginning, or setting on foot, or preparing or procuring, the means of a military expedition or enterprise against Mexico, a province in North America, of the King of Spain, with whom the United States were and are at peace.

A copy, test:

W. MARSHAL, *Clerk.*

STATE OF VIRGINIA, *Henrico county, to wit:*

William Waller Henning, and William Munford, both of the city of Richmond, personally appeared before me, Daniel L. Hylton, a justice of the peace for the said county, and made oath that the printed statements of the evidence of witnesses, examined before the circuit court of the United States for the fifth circuit and district of Virginia, contained in the thirty-four pages hereunto annexed, which evidence was delivered in court, on a motion for an attachment against General James Wilkinson, on the several trials of Aaron Burr for treason against the United States, and for a misdemeanor, and on a motion for the commitment of Aaron Burr, Herman Blannerhasset, and Israel Smith, for the purpose of their being sent out of the said district of Virginia for trial, are, in the opinion of the said Hening and Munford, substantially faithful and accurate. A very large proportion thereof has been corrected by means of the joint notes of the said deponents, Hening and Munford, and of Thomas Ritchie, editor of the Enquirer. The said printed statements have been generally examined, and acknowledged to be substantially correct by the witnesses themselves: and these deponents, who, either jointly or severally, took notes of the whole thereof, firmly believe that no error of any importance can be discovered in any part of the same. In testimony whereof, the said Hening and Munford have sworn and subscribed to this affidavit, this twenty-first day of October, 1807.

Sworn and subscribed before me, in due form of law, the day and date above written.

DANIEL L. HYLTON,
J. P. for Henrico county.

WM. W. HENING,
WM. MUNFORD.

Debate on motion for an attachment against General James Wilkinson.

TUESDAY, *June* 24.

On this occasion the following testimony was produced: JAMES KNOX, on the part of the prisoner; Lieutenant GAINES and Mr. GRAHAM, on behalf of the prosecution.

JAMES KNOX says he went to New Orleans in March; soon after his arrival, received a note from General Wilkinson, the object of which appeared to be to get information about Sergeant Dunbaugh; waited on the General; he asked me if I was not afraid to come before him after what had been said about him? Told him I was not. Asked me if I knew, and was at liberty to say anything of the party coming down the river? I told him I was at liberty to say anything I knew. He said he was very uneasy, had lost his wife, but that gave him little uneasiness compared with the state of the country; he asked me if I would go to Richmond; said he would do anything to aid me; I told him I expected money in ten days, and would then go; he offered me what money I might want; would not accept any; was served with a subpœna by Lieutenant Gaines; shortly time after arrested by the sheriff and carried to

Judge Hall's; judge not at home; the Governer recommended to the sheriff if the judge was not at home, to let me go at liberty till next day; Judge Hall told me I must either give my affidavit, or go to Richmond; told him could not give my affidavit without advice, but should go to Richmond when I got money; the judge said I must then give security or go to jail: gave two securities in five hundred dollars each, appeared next day; judge had printed interrogatories; I asked him to let me read them; gave them back; he asked me to answer them; told him I had not counsel, and could not answer them without; saw counsellor Carr, he told me they had no right to compel me to answer the interrogatories. The judge persisted, and asked me some of the questions; I told him, to save trouble, I would relate what occurred while coming from Meadville to that place. The judge sent for Mr. Fort; Mr. Fort made some observations, and also refused to answer the interrogatories; he and myself sent to jail by the judge, and confined with negroes and others; Mr. Fort was shortly after bailed by his friends; some of mine came to relieve me; were told the sum demanded was five or ten thousand dollars; I stayed three days in jail; was then taken out by Sergeant Dunbaugh and others who had side-arms; the men went with us to the water; Sergeant Dunbaugh and myself went on board; asked Dunbaugh if that was a guard; said it was not; has since told me it was; asked if Lieutenant Gaines was on board; was told he soon would be; asked leave to go on shore for my clothes; refused; when Dunbaugh took me from the jail, he had an order which he handed to the jailer; wrote, while in jail, to Lindsley and Doctor Monhollen; told them if they came to Orleans what they might expect. When Lieutenant Gaines came on board the vessel, he said I was in an ill humor; told him I was; he advised me, as I was there, to bear my situation with patience; asked him to let me go on shore for my clothes; he said he could not, had nothing to do with it; General Wilkinson alone could do it; brought to Richmond without clothes; Captain G. said he had forty dollars for me; told him I did not want it, if I could be permitted to go on shore; he said I was not compelled to take it; I told him I must accept it, unless permitted to go on shore, the money was sent on shore, my bill to my landlord paid, and twenty dollars returned me by Governor Claiborne, who came on board and accompanied us six or eight miles.

On our passage, Captain Gaines said I must understand I was sent by Judge Hall. General Wilkinson asked me the next day if I had any objection to going to Richmond, and if Captain Gaines had not spoken to me on the subject; I told him he had; that I was ill used; brought off without clothes or money; General Wilkinson said, if so, I had been badly used: that that was the first he heard of it; asked again if I was averse to going; told him I was not, if properly treated; he said if I would give my honor that I would go, I should be no longer controlled; I refused; told him I had asked two favors of him and Mr. Gaines, and should not ask a third from any man; after some time, he asked me if twenty dollars would be of service to me; told him I had no clothes, and must have some; he then talked with Mr. Lindsley, and returned to me, and asked if fifty dollars would serve me; told him that sum would be requisite to get me clothes; came to Richmond in a pilot boat; Lieutenant Moxley said he was to take charge of General Wilkinson's passengers; carry them to Richmond, and there to wait General Wilkinson's orders.

Cross-examination by the counsel of the United States.

Question. Have you any military commission?

A. None.

Q. Where were you born?

A. Maryland; left it very young; resided in Pennsylvania, and left it some time in November last; left Pennsylvania, Meadsville, for New Orleans, 24th or 25th November; went down the Allegany and Ohio to Beaver; went thence with about twenty or thirty to Blanerhassel's island; left that place some time in December, Blannerhasset and another with them; stopped at Shawany town; went with about double the number to Cumberland Island; stayed a day and a half, met with Colonel Burr and a few others; the whole number fifty or sixty, about seven or eight boats, five fire-arms; went thence to Fort Massac. Sergeant Dunbaugh joined them there with a musket; after meeting with Colonel Burr, considered himself under his direction, went to Natchez; Colonel Burr did not accompany them; went from Natchez to New Orleans; some of the boats chartered, and others sold; arrived at Orleans 13th or 16th March; first notice, after seeing General Wilkinson, of proceedings against him was, when carried before Judge Hall; was said to be carried under an affidavit of General Wilkinson before Judge Hall; Captain G. requested him to write to him on shore, and he would get what he wanted; he was not permitted to send the letter; never mentioned to General Wilkinson till arrived in Hampton Roads; treated as others while on his way; arrived at Richmond on Friday evening; put up at the Bell. Three days elapsed before he saw Colonel Burr; mentioned the treatment he had received to Colonel Burr, and intended mentioning it to the court on his first appearance, but was told it was unnecessary.

Miscellaneous questions and answers.

Whilst at the mouth of Cumberland river, and when Colonel Burr made his escape, he was one that took Colonel Burr in a wherry and carried him some distance; left him in the woods; did not hear him address any one. The note wrote him by General Wilkinson, and sent by Dunbaugh, was left at his house sealed; the object was to obtain some information about Dunbaugh; no letters; carried Colonel Burr's things to a parson Bruin's, as he was told; had but few guns; those traded for as they desended the river; vessel sailed from New Orleans in half an hour after General Wilkinson came on board; the one hun-

dred and fifty dollars offered him by General Wilkinson, he was induced to believe, was to bribe him to give evidence against Colonel Burr; said he could obtain from Colonel Tyler a sufficiency to carry him home under his agreement with that gentleman; this conversation took place before the subpœna was served.

Lieutenant Gaines received a letter from Attorney General of the United States enclosing subpœnas for witnesses against Colonel Burr; went to New Orleans in consequence, and arrived on 7th May; called several times at the house where C. Knox stayed with Mr. Lindsley and Dr. Monhollen; was told by the landlord those gentlemen walked out whenever he approached; he told his business, and at length saw them; they said they had belonged to Burr's party, and did not wish to appear against him; he told them the commander-in-chief offered them a passage in the United States' sloop with him; Knox said he could not come till he had made some money arrangements; he applied to Judge Hall; the judge directed him to obtain an affidavit of the refusal, and he would take the proper steps; he said the subpœna must be served by the marshal or sheriff, and proposed appointing him a deputy; he refused, unless he could afterwards be released from any further service in that capacity; Knox appeared always ill-natured, which induced him to ask him if he could do anything for him; he obtained from the United States' agent at that place forty dollars, and offered it to Knox, which he, after some hesitation, accepted. Offered him paper, &c., and requested him to write to some friend on shore, or myself; heard nothing more from him. In serving the subpœna, he acted under the authority of the Attorney General, in every other respect, while at New Orleans, under the authority of the marshal at that place. At Hampton Roads Knox said he wished to come to Richmond, but wished to leave that vessel; I told him he should, but had not determined how he could be conveyed to Richmond; his getting off gave me no concern, because I supposed he could be again caught in some part of this country; whilst the witness was on shore General W. procured a vessel, and sent the witness to Richmond; he considered the witness under his authority, and not as a military officer, but as deputy marshal.

He gave to Sergeant Dunbaugh an order at New Orleans, to receive from jail, and deliver to the commanding officer on board the United States' sloop Revenge, the body of James Knox. He should not have conceived any citizen of New Orleans bound to execute that order; he did not consider Sergeant Dunbaugh further bound than in compliance with his promise; he was called Sergeant Dunbaugh, but did not consider him under his authority as a military officer; General Wilkinson made his affidavit at his own quarters; he delivered it to a judge; they consulted counsel; he delivered to General Wilkinson subpœnas from the attorney of the United States, one for himself, and another for Mr. Graham; he always considered himself bound to obey the orders of General Wilkinson; he considered General Wilkinson as having full control of the officers on board the Revenge, if he chose to exercise it; on their way to Virginia, they stopped at the Havana for fresh supply of water and other necessaries; while preparing to go on shore, a shot was fired from the castle, and orders given to come on shore; they went on shore at the request of the persons on board made to Wilkinson and Read; had good provisions, &c., on board; heard Read direct the cook to let those people have their provisions regularly; he, on several occasions, received advice of counsel how to act in executing the business in which he was engaged; the money received from the military agent was obtained after several applications from the witness; he was advised by General Wilkinson and the attorney to procure money and furnish them; on application to the military agent, he said he had been directed to advance for that purpose.

Mr. Graham. A short time after the arrival of Captain Gaines at New Orleans, he was told that there was a subpœna for him; that there was a vessel of the United States that would convey him to Richmond. I then went to General Wilkinson to know whether he could be accommodated, the vessel being small, and his health bad. General Wilkinson said he understood there was several witnesses in town, some of them unwilling, others unable to come round; asked if I knew of any legal means to force them; told him I supposed the judge could inform him; waited on the judge himself to know whether there was such legal process. At this time, or some other, General Wilkinson told me to ask the judge if there was any impropriety in advancing money to the witness, or to what amount; the judge said, so far from it, the witness had a right to demand it.

The judge said, if the witnesses refused to answer interrogatories, or refused to enter into recognisance, then he felt that, under the law, he would be authorized to send such witnesses round under the care of the district marshal. He saw, a few days after, in an outer room at the judge's, Mr. Knox talking with Mr. Keen, an attorney; some short time after Knox came before the judge. The judge asked him if he was then willing to answer questions, or enter into recognisance; he declined doing either. The judge then showed a Mr. Fort, who was in the same situation with Knox and Read, the law, and advised them to do one of the two, or he should be obliged to act rigidly towards them, contrary to his wish. The judge asked Mr. Fort to answer the interrogatories, which he refused to do. The judge then sent for the marshal, and committed both of them. In the afternoon Captain Fort gave security in five hundred dollars for his appearance at Richmond.

He understood Captain F. had taken passage for New York, in order to come to Richmond; but F. told the witness he could not leave New Orleans without injury to his business. Mr. Keen intimated to the judge he did not appear as an attorney, but expressed some doubt of the correctness of the preceedings. The ship's stores were good, and the persons treated civilly and not re-

strained. The cause of calling at the Havana was owing to bad winds, and being chased close in by a British cruiser. Captain Read, Gaines, Mr. Smith, and myself, went on shore to procure fruit, &c.; remained there about three hours. He thinks they would not have gone on shore but for a shot from the fort under which they run; the naval and other officers are under the command of General Wilkinson; were formerly under the control of the Government, but the alarmed situation of the country had induced the giving the command to W.; saw no guard on his way to New Orleans; he went down the river with Captain Fort, who said his object was to go to Mexico, of which declaration, he, the witness, made no secret. He was asked to use his influence with Captain Gaines to prevail on him to accept from the judge the appointment of deputy marshal.

Lieutenant Gaines, upon being called up again, said, he is an officer of the United States' army; never consulted General Wilkinson about accepting the appointment of deputy marshal. He understood Fort was included in the same affidavit with Knox. He sailed from New Orleans in the Revenge; saw General Wilkinson exercise no kind of authority on the voyage.

Evidence of General Eaton.

TUESDAY, *August* 18.

Mr. Hay asked the witness if he had heard the opinion of the court delivered, and understood the restrictions with which he was to give his testimony. He was answered in the affirmative.

Mr. Eaton, holding a piece of paper in his hand, inquired of the court whether he might occasionally recur to his notes for the purpose of refreshing his memory.

Chief Justice. Were they written by yourself?

Answer. They were.

Mr. Wickham. At what time were they taken?

Answer. The notes which I hold in my hand are mere memoranda drawn up here, and taken partly from my recollection of notes which I made at the different times the conversations passed between Colonel Burr and myself, and partly from notes which I have at my lodgings.

Col. Burr. At what time did you say you took the original notes?

Answer. At the time I had the conversations with you, sir.

The court decided that he should not recur to his notes.

Mr. Eaton, addressing the court: I wish, sir, to be indulged in a few preliminary remarks. I have long been before the public; much stricture and some severity have passed upon me; I wish to be instructed whether I may, in stating my evidence, occasionally make explanations with respect to my own conduct, and the motives which governed me.

Chief Justice. The court will be better able to judge of the propriety of any explanation when the case shall occur; there may be cases in which it may be necessary; and if there should be particular objections to any of your explanations you may apply to the court for their decision.

Mr. Eaton. Concerning any fact which may go to prove treason against Colonel Burr, I know *nothing;* concerning certain transactions which are said to have happened at Blannerhasset's island, I know *nothing;* but concerning Colonel Burr's expressions, and his treasonable intentions, I know *much;* and it is to these that my evidence relates.

Mr. Martin interrupted the witness, and inquired as to the effect of the opinion of the court, whether the witness could go into evidence of any transactions distinct from that stated to have taken place at Blannerhasset's island.

Chief Justice. The opinion of the court is this: that any proof of intention formed before the act itself, if relevant to that act, may be admitted. One witness may prove the intention at one time, and another witness may prove it at another time, so as to prove the continuance of the intention throughout the whole transaction: and therefore proof of very remote intentions may be relevant to this particular act.

Mr. Martin. I hope, when he speaks of a treasonable intention not applicable to this particular act, the court will stop him.

Mr. Eaton. During the winter of 1805—6, I cannot be positive as to the distinct point of time, yet, during the winter, at the city of Washington, Colonel Burr signified to me that he was organizing a secret expedition to be moved against the Spanish provinces on the southwestern frontiers of the United States—I understood, under the authority of the General Government. From our existing controversies with Spain, and from the tenor of the President's address to both Houses of Congress, a conclusion was naturally drawn that war with that country was inevitable. I had then just returned from the coast of Africa; and having been for many years employed on our own frontiers, and on a foreign coast, still more barbarous and obscure, I knew not the extent of the reputation which Colonel Burr sustained in the consideration of his country. The distinguished rank which he had held in society, and the strong marks of confidence which he had received from his fellow-citizens, gave me no right to doubt of his patriotism. As a military character I had been made acquainted with him, but not personally; and I knew none in the United States in whom a soldier might more securely have confided his honor than in Colonel Burr. In case of enmity to this country, from whatever quarter it might come, I thought it my duty to obey so honorable a call as was proposed to me. Under impressions like these, I did engage to embark in the enterprise, and did pledge my faith to Colonel Burr. At several interviews, it appeared to be the intention of Colonel Burr to instruct me, by maps and other documents, of the feasibility of penetrating to Mexico. At length, from certain indistinct expressions and inuendoes, I admitted a suspicion that Colonel Burr had other projects. He used strong expressions of reproach against the administration of the General Government; ac-

cused them of want of character, want of energy, want of gratitude. He seemed desirous of irritating my resentment, by reiterating certain injurious strictures cast upon me on the floor of Congress, on account of certain transactions on the coast of Africa, and by dilating on the injuries which I had sustained from the delays in adjusting my account for moneys advanced for the United States; and talked of pointing out to me modes of honorable indemnity. I will not conceal here that Colonel Burr had good grounds to believe me disaffected towards the Government; I had, indeed, suffered much from delays in adjusting my accounts for cash advanced to support the credit of the Government whilst I was consul at Tunis, and for the expense of maintaining the war with Tripoli. I had but a short time before been compelled ingloriously to strike the flag of my country from the ramparts of a defeated enemy, where it had flown for forty-five days. I had been compelled to abandon my comrades in war on the fields where they had fought our battles. I had seen cash offered to the half-vanquished chief of Tripoli, (as he had himself acknowledged,) as the price of pacification—[Mr. Wickham.—By whom? Answer. By our negotiator]—when as yet no exertion had been made by our naval squadron to coerce that enemy. I had seen the conduct of the author of these blemishes on our then proud national character, if not commended, not censured; whilst my own inadequate efforts to support that character were attempted to be thrown into shade. To feelings naturally arising out of circumstances like these, I did give strong expressions. Here I beg leave to observe, in justice to myself, that however strong those expressions, however harsh the language I employed, they would not justify the inference that I was prepared to dip my sabre in the blood of my countrymen, much less of their children, which I believe would have been the case had this conspiracy been carried into effect. [Mr. Martin objected to this language.] I listened to Colonel Burr's mode of indemnity; and as I had by this time begun to suspect that the military expedition he had on foot was unlawful, I permitted him to believe myself resigned to his influence, that I might understand the extent and motive of his arrangements. Colonel Burr now laid open his project of revolutionizing the territory west of the Allegany; establishing an independent empire there, New Orleans to be the capital, and he himself to be the chief; organizing a military force on the waters of the Mississippi, and carrying conquest to Mexico. After much conversation (which I do not particularly recollect) respecting the feasibility of the project, as was natural, I stated impediments to his operations, such as the republican habits of the citizens of that country, their attachment to the present administration of Government, the want of funds, the opposition he would experience from the regular army of the United States stationed on that frontier, and the resistance to be expected from Miranda, in case he should succeed in republicanizing the Mexicans. Colonel Burr seemed to have no difficulty in removing these obstacles. He stated to me that he had in person (I think the preceding season) made a tour through that country; that he had secured to his interests and attached to his person the most distinguished citizens of Tennessee, Kentucky, and Territory of Orleans; that he had inexhaustible resources and funds; that the army of the United States would act with him; that it would be reinforced by ten or twelve thousand men from the above-mentioned States and Territory; that he had powerful agents in the Spanish territory; and "as for Miranda," said Mr. Burr, facetiously, "we must hang Miranda." In the course of repeated conversations on this subject, he proposed to give me a distinguished command in his army; I understood the second command. I asked him who would command in chief. He said General Wilkinson. I observed that it was singular he should count upon General Wilkinson. The distinguished command and high trust he held under Government, as the commander-in-chief of our army, and as Governor of a province, he would not be apt to put at hazard for any precarious projects of aggrandizement. Colonel Burr stated that General Wilkinson balanced in the confidence of his country; that it was doubtful whether he would much longer retain the distinction and confidence he now enjoyed; and that he was prepared to secure to himself a permanency. I asked Colonel Burr if he knew General Wilkinson. He said "yes," and echoed the question. I told him that twelve years ago I was at the same time a captain in his wing of the legion of the United States, his acting brigade major and aide-de-camp, and that I thought I knew him well. He asked me what I knew of General Wilkinson I said I knew General Wilkinson would act as lieutenant to no man in existence. "But you are in an error," said Mr. Burr: "Wilkinson will act as *lieutenant* to *me*." From the tenor of much conversation on this subject, I was prevailed on to believe that the plan of revolution meditated by Colonel Burr, and communicated to me, had been concerted with General Wilkinson, and would have his co-operation; for Colonel Burr repeatedly and very confidently expressed his belief that the influence of General Wilkinson with his army, the promise of double pay and double rations, the ambition of his officers, and the prospect of plunder and military achievements, would bring the army generally into the measure. I pass over, here, a conversation which took place between Colonel Burr and myself respecting a central revolution, as it is decided to be irrelevant by the opinion of the bench. [Mr. Hay—you allude to a revolution for overthrowing the Government at Washington, and of revolutionizing the Eastern States.] I was passing over that to come down to the period when I supposed he had relinquished that design, and returned to his project in the West. I was thoroughly convinced myself that such a project was already so far organized as to be dangerous, and that it would require an effort to suppress it; for, in addition to positive assurances that Colonel Burr had of assistance and co-operation, he said that the vast extent of terri-

tory of the United States beyond the mountains which offered to adventurers, together with a view of the mines of Mexico, would bring adherents to him from all quarters of the Union. The situation which these communications, and the impressions they made upon me placed me in, was peculiarly delicate. I had no overt act to produce against Colonel Burr. He had given me nothing upon paper; nor did I know of any person in the vicinity, who had received similar communications, and whose testimony might support mine. He had mentioned to me none as principally and decidedly engaged with him but General Wilkinson; a Mr Alston, who I afterwards learned was his son-in-law; and a Mr. Ephraim Kibber, who I learned was late a captain of rangers in Wayne's army. Of General Wilkinson, Burr said much, as I have stated; of Mr. Alston very little, but enough to satisfy me that he was engaged in the project; and of Kibby he said that he was brigade major in the vicinity of Cincinnati, (whether in Ohio or in Kentucky I know not,) who had much influence with the militia, and had already engaged the majority of the brigade to which he belonged, who were ready to march at Burr's signal. Mr. Burr talked of this revolution as a matter of right inherent in the people, and constitutional; a revolution which would rather be advantageous than detrimental to the Atlantic States; a revolution which must eventually take place, and for the operation of which the present crisis was peculiarly favorable; that there was no energy to be dreaded in the General Government; and his conversations denoted a confidence that his arrangements were so well made, that he should meet with no opposition at New Orleans: for the army and the chief citizens of that place were ready to receive him. On the solitary ground upon which I stood, I was at a loss how to conduct myself, though at no loss as respected my duty. I durst not place my lonely testimony in the balance against the weight of Colonel Burr's character, for, by turning the tables upon me, which I thought any man capable of such a project was capable of doing, I should sink under that weight. I resolved therefore with myself, to obtain the removal of Mr. Burr from this country in a way which would be satisfactory and honorable to him; and on this I did consult him, without his knowing my motive. Accordingly I waited on the President of the United States, and, after a desultory conversation, in which I aimed to draw his attention to the West, I said to him, (I took the liberty of suggesting to the President,) that I thought Colonel Burr ought to be removed from the country, because I considered him dangerous in it. The President asked where he should send him. I said to England or Madrid; it has been said in some publications that I added Cadiz. The President, without any positive expression, (in such a matter of delicacy,) seemed to think the trust too important, and expressed something like a doubt about the integrity of Mr. Burr. I frankly told the President that perhaps no person had stronger grounds to suspect that integrity than I had; but that I believed his pride of ambition had so predominated over his other passions, that when placed on an eminence and put on his honor, a respect to himself would secure his fidelity. I perceived that the subject was disagreeable to the President; and to bring him to my point in the shortest mode, and in a manner which would point to the danger, I said to him, if Colonel Burr was not disposed of, we should in eighteen months have an insurrection, if not a revolution, on the waters of the Mississippi. The President said he had too much confidence in the information, the integrity, and attachment of the people of that country to the Union, to admit any apprehensions of that kind. The circumstance of no interrogatories being made to me, I thought imposed silence upon me at that time and place. Here, sir, I beg indulgence to declare my motives for recommending that gentleman to a foreign mission at that time; and in the solemnity with which I stand here, I declare that Colonel Burr was neutral in my feelings; that it was through no attachment to him that I made that suggestion, but to avert a great national calamity which I saw approaching, to arrest a tempest which seemed lowering in the West, and to divert into a channel of usefulness those consummate talents where to mount "the whirlwind and direct the storm." About the time of my having waited on the President, or a little before, I determined at all events to have some evidence of the uprightness of my intentions, and to fortify myself by the advice of more experienced men. I waited upon two members of the House of Representatives, whose friendship I had the honor long to retain, and in whose wisdom and integrity I had full faith. I am at liberty to give their names, if required; and I believe a Senator, but of that I am not certain. I opened to them the projects of Colonel Burr. They did not seem much alarmed.

[Mr. Martin objected to the witness stating any of the observations of other persons to himself. After some desultory conversation, the bench supported the objection.]

Mr. Eaton. I did ask indulgence of the court to make such explanations, because perversions of my conduct were before the public; but I waive this indulgence, contented with meeting these perversions at some other time and place.

[Chief Justice. You have used that indulgence.]

Little more passed between Colonel Burr and myself, relevant to this inquiry, whilst I remained at Washington, though he was solicitous to engage me in his Western plans. I returned to Massachusetts, to my domestic concerns; and thought little more of Colonel Burr, or his projects, until in October last, a letter was put into my hands from Mr. Belknap to T. E. Danielson, stating that boats were building on the Ohio.

Mr. Burr. Have you that letter?

Mr. Eaton. No.

Mr. Burr. It is improper to state it.

Mr. Hay. It is immaterial; Mr. Belknap is here.

Mr. Eaton. As to letters, I have no correspondence with Colonel Burr; I was about to state,

that I made a communication to the President of the United States, through the hands of the Postmaster General, stating the views of Colonel Burr.

Question by the prosecution.

Mr. Wirt. Was there any conversation between you and the prisoner, in which you spoke of the odium attached to the name of *usurper?*

Answer. That conversation was excluded by the opinion of the court, as relating to the central project.

Mr. Hay. Did you mean to state that the honorable indemnity proposed to you by the prisoner, was to be included in this plan?

Answer. I understood it to be included in the permanent rank and emolument to be assigned to me; in his full confidence that he should erect a Government, of which he was to be the chief; which was so often and so strongly repeated, that I could not misunderstand him.

Cross-questioned.

Mr. Martin. Do you recollect when you arrived in Washington?

Answer. I said that I did not recollect particularly; but the principal part of these conversations must have been between the middle of February and the middle of March.

Q. Was there any particular conduct calculated to put an end to Colonel Burr's importunities?

A. Yes. At some time of our last interviews, I laid on his table a paper containing this toast, which I had given to the public: "The United 'States.—Palsy to the brain that should plot to 'dismember, and leprosy to the hand that will not 'draw to defend our Union."

Q. Where was that toast drunk?

A. I cannot say. This question was made to me from authority; it was sent, with other toasts I corrected, to a paper at Springfield. I laid this paper on Colonel Burr's table, that he might see it; and I have reason to believe that he did.

Q. Was it drunk at any distant place? At Philadelphia?

A. I do not recollect; I thought at first it was at Philadelphia; but I had received many hospitalities throughout the Union; many of my toasts were published; and, in the hurry of passing and repassing, I have completely forgotten.

Mr. Burr. Do you recollect when you left Washington?

A. About the first of April.

Mr. Burr. Then this paper was put on my table previous to that day?

Mr. Eaton. I will state the circumstances which induced me to believe you had seen it: we were at Alexandria together, and you made no longer such communications to me as heretofore; I meant you to see it, because I had given it to the world, and with it my sentiments.

Q. Then you are not certain when and where this toast was drunk?

A. I am not. But I am certain it was not at Washington, because I gave another there when called upon.

Q. Did you not say that all those conversations happened between the middle of February and the middle of March?

A. No; I did not say so. I said the principal part of these conversations.

Q. You say this toast was printed at Springfield? A. I did.

Q. Did you transmit it for publication?

A. Yes, I did.

Q. Do you recollect from what place?

A. Not distinctly.

Q. Have you in your possession a paper containing that toast?

A. I have not, here.

Q. You have mentioned something about a communication which you made to the President, through the Postmaster General? Look at that paper, is that your signature?

A. It is. I must give a short account of that paper. Mr. Eaton then mentioned that the notes on the two first pages were drawn up by Mr. Granger, from conversations which had passed between Mr. Granger and a Mr. Ely, on certain communications made to Mr. Ely by Mr. Eaton, respecting Colonel Burr's plans; that he had seen Mr. Ely at Northampton, at the session of the court of common pleas, at a time when they had first heard of the building of boats on the Ohio. The notes on the last page, in Mr. Granger's writing, and subscribed by himself, were from subsequent conversations between him and Mr. Granger.

Mr. Burr. You spoke of accounts with the Government; did you, or the Government, demand money?

A. They had no demand on me; I demanded of them.

Q. Did they state in account a balance against you?

A. I expended money for the service of the United States, when employed in my agency at Tunis; an account of which, being presented to the accounting officers of the Treasury, was refused to be allowed by them, there being no law, as they conceived, to justify it. I applied to Congress, a committee of which reported that they supposed the account to be within the discretion of the accounting officers of the Treasury. In this situation the business stood, when I was ordered to the coast of Barbary; and when I returned, found that new difficulties had occurred to an adjustment. Leaving out the sums which I had advanced, the Government had a balance against me. The last session of Congress has provided for the payment, and the Commissioners have settled it.

Mr. Martin. What balance did you receive?

A. That is *my* concern, sir.

Mr. Burr. What was the balance against you?

Mr. Eaton, (to the court.) Is that a proper question, sir?

Mr. Burr. My object is manifest; I wish to show the bias which has existed on the mind of the witness.

Chief Justice saw no objection to the question.

Mr. Eaton. I cannot say to a cent or a dollar; but I have received about $10,000.

Mr. Burr. When was the money received?

A. About March last.

Q. You mentioned Miranda; where did you understand he was gone?

A. On the benevolent project of revolutionizing the Spanish provinces.

Q. What part of them?

A. Caraccas. I had some reason, too, to know something of the project; because I, too, was invited to join in *that*. He, too, was to have been an Emperor of Mexico; he might have been troublesome to us; and, of course, when I asked you what was to be done with him, you observed, "hang him."

Q. Did you understand I was to do all at once; to execute the central project, too, as well as that in the West?

A. I have no objections to answering that, but it will be nothing in your favor. When you were speaking of a central revolution, not much was said about the revolution in the West; had the other been effected, I doubt much whether you would have been willing to have separated that part.

Q. You spoke of a command?

A. You stated what I have already mentioned, that you were assured, from the arrangements which you had made, that an army would be ready to appear when you went to the waters of the Western country. I recollect, particularly, the name of Ephraim Kibby. You asked about his spirit; you asserted that his brigade was ready to join you; and that the people also in that country were ready to co-operate. You spoke of *your* riflemen, *your* infantry, *your* cavalry. It was with the same view you mentioned to me that that man; (pointing to General Wilkinson, just behind him,) was to have been the first to aid you; and from the same views, perhaps, you have mentioned me.

Mr. Martin objected to the witness interposing his own feelings in this manner.

Mr. Hay. Some allowance is to be made for the feelings of a man of honor.

Mr. Eaton, bowing, apologized to the court for the warmth of his manner.

Mr. Burr. You spoke of my revolutionizing the Western States; what were the boundaries of the new empire?

A. Your line was to be the Allegany mountain. You were certain about Kentucky and Tennessee, but expressed some doubts about Ohio; I well recollect *that*, on account of the reason which you gave, that they were too much of a plodding, industrious people to engage in your plans.

Q. How was this business to be effected?

A. I understood that your agents were in the Western country; that the commander-in-chief was ready to co-operate with his army; and that these, with the adventurers that would join you, would compel the States to a separation. Indeed, you considered New Orleans as already yours, and that, from this point, you would make conquests, and consolidate your empire.

Q. Was it, after all this, that you recommended me to an embassy?

A. Yes, because I thought it the only way to avert a civil war.

Q. Did you communicate then your recommendation to me?

A. Yes; and you gave a modest assent to the proposal.

Q. What, then, would have become of your command?

A. That, I had disposed of myself.

Q. Did you understand that you had given me a definitive answer?

A. No; after you had developed yourself, I determined to use you until I got everything out of you; and on the principle that, "when innocence is in danger, to break faith with a bad man is not fraud, but virtue."

Q. Did you think that your proposition as to a foreign embassy, which was so incompatible with my own plans, would be received by me with indifference, had I abandoned the project?

A. You seemed to me to want some distinguished place; as to the mode, you were indifferent; and you seemed to acquiesce in the plan of a foreign embassy.

Mr. Hay. You said that you received about $10,000 from the Government. Did the act of Congress give you a definite sum, or refer your accounts to the Department of State?

A. The act of Congress gave the accounting officers the power of settling with me, according to equity, under the inspection of the Secretary of State; under whose Department I had served; and the settlement was accordingly made.

Evidence of Commodore Truxtun.

TUESDAY, *August* 18.

Mr. Hay. Were you present when the court delivered their opinion relative to the order in which the evidence is to be introduced?

Answer. I was; and understood the purport of it. I know nothing of any overt act, or treasonable designs, or communications of Colonel Burr.

Q. Does your testimony relate to conversations with Colonel Burr about the taking New Orleans?

A. I know nothing about the taking of New Orleans. They related to the Western country; to the Spanish territories; to the settlement of lands; to the digging of canals, and the building of boats.

Mr. Hay then observed, that he had no questions at present for Commodore Truxtun.

Mr. Wickham. Then, sir, I hope I may be permitted to ask Commodore Truxtun: 1st. Whether he had not many and minute conversations with Colonel Burr? and 2d. Whether those conversations related to treason?

Mr. Hay objected to Mr. Wickham's putting these questions; and said, if the gentleman expected, by a contrivance of this sort, to exclude the witness, he would ask a few questions.

Mr. Wickham insisted on his right to examine the witness, as the counsel for the United States had relinquished him; and said he could assure the gentleman that it was not a *contrivance*, but the exercise of a right.

Mr. Wirt. The court knows that there are two indictments against the accused. The witnesses have been summoned promiscuously; and it is not possible for the prosecutor to know the particular point to which every witness is to testify. From what Commodore Truxtun has said, it appears that his evidence related to the misdemeanor. But, if he be suffered to come in on the present case, ought not his examination to be free and complete?

Mr. Hay. Upon recollecting the substance of Commodore Truxtun's testimony, I cannot but believe that it applies directly to the present occasion. It bears most strongly upon General Eaton's testimony. From Eaton's evidence, the treasonable project and the misdemeanor were intimately connected. Of course, what goes to establish the one of these projects, will, so far, contribute to prove the other.

Mr. Hay said it always gave him great pleasure to repair any injury which he might inadvertently have done to the feelings of any gentleman. He acknowledged that he ought not to have made use of the term contrivance, in the manner he had done. Addresssing Commodore Truxtun: Had you not several conversations with the accused upon the subject of the Mexican expedition?

Commodore Truxtun. About the beginning of the Winter of 1805-'6, Colonel Burr returned from the Western country, and came to Philadelphia. He frequently, in conversation, mentioned to me certain speculations in western lands. These conversations were uninteresting to me; and I did not pay much attention to them. Col. Burr requested me to get the Navy of the United States out of my head, as he had something in view, both honorable and profitable, which he wished to propose to me. I considered this as nothing more than a desire to get me interested in land speculations. These conversations were frequently repeated; and some time in the month of July, 1806, Col. Burr observed that he wished to see me unwedded from the Navy of the United States, and not to think any more of those men at Washington. He observed that he wished to see or to make me (I do not recollect which) admiral; for he contemplated an expedition into Mexico, in the event of a war with Spain, which he thought inevitable. He asked me if the Havana could not be easily taken in the event of a war. I told him that it would require the co-operation of a naval force. Mr. Burr observed, that might be obtained. He pursued the inquiry as to Carthagena and La Vera Cruz; what personal knowledge I had of those places, and what would be the best mode of attacking them by sea and land. I gave my opinion very freely. Mr. Burr then asked me if I would take the command of a naval expedition. I asked him if the Executive of the United States was privy to or concerned in the project. He answered me, emphatically, that they were not. I asked him that question because the Executive had been charged with a knowledge of Miranda's expedition. I told Mr. Burr that I would have nothing to do with it; that Miranda's project had been intimated to me, and that I had declined any agency in those affairs. Mr. Burr observed, that in the event of a war he intended to establish an independent Government in Mexico; that Wilkinson, the army, and many officers of the navy would join. I replied, that I could not see how any of the officers of the United States could join. He said that General Wilkinson had projected that expedition, and that he himself had matured it; that many greater men than Wilkinson were concerned, or would join; and thousands to the westward.

Mr. Hay. I beg you to refresh your memory. Do you recollect whether he said that General Wilkinson had seriously joined it?

Answer. I asked him if General Wilkinson had seriously engaged in such a scheme. He said that he had, and many greater men than Wilkinson.

Mr. Hay. I ask you, sir, whether at that time you were in the service of the United States?

Answer. I was declared not to be.

Mr. Hay. I wish you to suppose that I do not mean to hurt your feelings by any question; but it is necessary to account to the jury for the application which was thus made to you by the accused. Did you not express some dissatisfaction at the treatment of the Government?

Answer. I certainly was hurt at it?

Mr. Burr asked me if I would not write to General Wilkinson, as he was about to despatch two couriers to him. I told him that I had no subject to write on, and declined writing. Mr. Burr observed that several officers would be pleased at being under my command. He spoke highly of a Lieutenant Jones, and asked me whether he had not sailed with me. I answered him that he had not; and that I could give no account of him, as I did not know that I ever had seen him. Mr. Burr observed that the expedition could not fail; that the Mexicans were ripe for revolt; and that he was incapable of anything chimerical, or that could lead his friends into a dilemma. He showed me the draught of a periogue, such as plies between Powle's Hook and New York; asked my opinion as to the construction of boats, and whether those were adapted to the Mississippi river and the waters emptying into it. I gave my opinion that they were. He asked me whether I could get a naval constructor to make several copies of the draught. I spoke to a naval constructor, but he could not make the draughts as soon as Col. Burr wished, and the draught was returned to him. Mr. Burr told me he intended those boats for the conveyance of agricultural products to New Orleans, and, in the event of a war, for transports. I know they were not calculated for transports by sea, nor were they calculated for carrying guns; but having determined not to have anything to do with the Mexican project, I said very little about the boats. But I well recollect that, in subsequent conversations, about the latter end of July, I told Col. Burr there would be no war with Spain. He seemed very sanguine that there would. He said, however, if he was disappointed in war, that he was about concluding a bargain for a large tract of land on the Washita;

and that he intended to invite his friends to join him in the settlement of it. He said that in one year he would have one thousand families of respectable and fashionable people, and some of them men of property; and that it would be a charming society; that in two years there would be double the number; and that, being on the frontier, they would be ready to march immediately, whenever a war took place. I have endeavored to narrate the substance of these several conversations as nearly verbatim as I can recollect. I may not have done it exactly; but, as nearly as possible, I believe it is correct.

Questioned by the prosecution.

Mr. McRae. Do I understand you correctly when I suppose you said that Col. Burr requested you to get the Navy of the United States out of your head, and to think no more of those men at Washington?

Answer. Yes, correctly?

Mr. Hay. Did these conversations take place after the declaration that you were no longer in the service of the United States?

A. The whole of them.

Colonel Carrington, (one of the jury.) Did they take place some time in July?

Answer. Yes.

Mr. Botts. Did Colonel Burr think there would be war, and you that there would not?

A. I observed to him there would be no war, though I saw great cause of it.

Mr. Hay. You say that those conversations took place after you were out of service; had you expressed your dissatisfaction at your being declared out of service?

A. Yes; frequently.

Q. I believe there were some publications on the subject?

A. There were.

Colonel Carrington. You stated that there were several conversations?

A. Yes; the first was on Colonel Burr's return; the second in July, 1806; and the third about the last of July.

Q. In 1805 were you in the service of the United States?

A. The misunderstanding between the Secretary of the Navy and myself took place in March, 1802.

Q. Your first conversations were about building bridges, settling lands, &c.?

A. Yes; when Colonel B. first returned from the westward.

Mr. McRae. He did not express to you his designs respecting the Washita land till he had discovered your aversion to the Mexican project?

A. He did not; early in the conversations between us, I had declined all agency in the Mexican project. The conversation about the Washita lands was the last; but he had previously spoken about speculations in Western lands generally.

Mr. Wirt. Did he say at the latter end of July that he was about concluding a bargain for the Washita land?

A. I think so; I cannot recollect distinctly the order of time, or the precise number of conversations; I have mentioned, as nearly as possible, those that did occur.

Mr. Hay. When he proposed to make you admiral, did not the thought strike you how he was to accomplish this?

(Mr. Burr denied that Commodore Truxtun had said that Mr. Burr had promised to make him an admiral.)

Commodore Truxtun. Mr. Burr told me he wished to make or see me one; I do not particularly recollect which was his expression.

Mr. Hay. Colonel Burr spoke of an attack upon the Spanish provinces by sea and land; how was the navy to be procured?

A. Colonel Burr said he intended to provide a formidable navy after he had completed the expedition, and had established an independent Government.

Mr. Hay. From what quarter of the world was the expedition by sea to go?

A. I do not know; I did not ask him where it was to go from.

Mr. Hay. Did you not understand that you were to command the expedition by sea?

A. He asked if I would command; I asked him if the President of the United States was privy to the project. He answered, emphatically, that he was not. I then declined, and asked no more questions about the expedition.

Mr. Baker. I understood you to say that the navy was to have been erected after the Government was established?

A. Yes; after speaking of establishing himself in Mexico, and creating an independent Government, he said he intended to provide a formidable navy, at the head of which, I understood, he wished me to be.

Mr. McRae. Did he not talk of a naval expedition against the Havana?

A. I told Colonel Burr that the Havana could not be taken without a naval force; he said *that* could be obtained.

Cross-examined.

Mr. Burr. Did I not say I had never seen Lieutenant Jones?

A. I do not recollect that; you spoke highly of him.

Q. Do you not recollect I stated, if there was a war, that private enterprise and private expeditions would be proper and lawful?

(Mr. Hay objected to the question, because seemingly intended for the jury.)

Q. Did I say that many of the officers of the army and navy *would* join, or *probably* would join?

A. I think you said they *would* join.

Q. Was I not acquainted with your controversy with the Navy Department; had we not talked together for many years on the subject; did I not state to you that there was no intention to reinstate you; that you were duped by Smith and others; that they had no serious intentions of serving you; was not that the reason that I wished to unwed you from the navy?

A. You did state those facts.

Q. Do you not find that I was right? A. I know that.

Q. Did I not often talk to you about the settlement of lands? A. you did.

Q. Were we not intimate? A. Yes.

Q. Was there any reserve between us?

A. None.

Q. Did you ever hear me say anything about dismembering the Union, or seizing on New Orleans?

A. Never.

Q. Did I not state to you the advantages which would result from the establishment of an independent Government in Mexico, and the forming of a commercial connexion with this country?

A. Yes.

Q. You mentioned periogues; are they fit for any military purpose?

A. No; you stated that you intended them for the conveyance of agricultural products in time of peace, and, in war, for transports.

Q. Had you reason to doubt my intention to settle lands?

A. If there was no war, I took it for granted that such was your intention.

Q. If there had been a war, and the invasion of Mexico had obtained the sanction of Government, would you have joined me?

A. I would have got out of my bed at twelve o'clock at night to fight against England, France, or Spain, in case my Government had required my services

Mr. Wirt. When Colonel Burr spoke of a commercial connexion with this country, did you understand it was founded on the idea of his establishing an independent Government in Mexico?

A. I so understood it.

Mr. Hay. Did the prisoner, during any of these conversations, speak of any commercial speculations in which he, individually, or any of his friends, had an interest?

A. He spoke of the settlement of Western lands, from which produce might be carried down the waters of the Mississippi.

Mr. McRae. Were the remarks which he made on your relation to the Navy calculated to fill your bosom with resentment against the Government?

A. My bosom was already full enough, but certainly Mr. Burr spoke in concert with my feelings.

Mr. Hay. Could an expedition at sea be made as effectually against La Vera Cruz from any other port in the Western country as New Orleans?

A. New Orleans would be a proper place for preparing an armament, but no vessel of burden could sail from that place; the expedition might be carried on more conveniently from some port of the Atlantic States; but in the Western country there is no port better than New Orleans.

Mr. Parker, (one of the jury.)—Did you understand for what purpose the couriers were sent by Colonel Burr to General Wilkinson?

Answer. I understood that there was an understanding between them about the Mexican project.

Mr. Martin. Are there not preparations now making in Philadelphia, in contemplation of a war with England?

A. In New York there are.

Mr. Burr. Is it not a common thing in England to make such preparations?

A. Yes, in expectation of a war.

Mr. McRae. And when they make preparations, they do it openly?

A. Yes, it is no secret.

Q. Have you heard any person spoken of as intended for the commander of the vessel building in New York?

A. No.

Mr. Botts. Can ships be built secretly? can they be built in a corner of the room?

A. No.

Evidence of Peter Taylor.

Mr. Hay. This witness will directly prove the connexion of Mr. Burr with Mr. Blannerhasset, and his connexion with the crime itself.

Peter Taylor. The first information I got upon this subject was from Mr. Blannerhasset, when Mr. Blannerhasset and Mr. Alston were gone down the river. The people got much alarmed about this business, and Mrs. Blannerhasset sent me to Lexington after Mr. Blannerhasset, with a letter to prevent Colonel Burr from coming back with him to the island; I went through Chilicothe, but I did not find Mr. Blannerhasset there, and I then went on to Cincinnati; my orders were to call on Mr. John Smith; I called at Mr. Smith's store, where I saw his son; I asked if his father was at home; he said yes; I then informed him that I wished to speak to him; his son went and told him a man wanted to see him. When he came out, I inquired for Colonel Burr and Blannerhasset, to see whether he could give me any account of them; he allowed he knew nothing of either of them; that I must be mistaken; this was not the place; I said no, this was the right place—"Mr. John Smith, storekeeper, Cincinnati;" says I, "do not you recollect a young man who came here some time ago for Colonel Burr's top coat;" (great coat?) I said—"Sir, I have lived with Mr. Blannerhasset for three years."

When Mr. Smith heard me talk so, he took me up stairs to talk with me. He wanted to know the news our way; I told him how the people had got alarmed; he wanted to know what was passing; I told him that, from the information I had got from Mr. Blannerhasset, the people were going to make a new settlement of lands; that was all I knew; he seemed surprised; he asked what was said about General Wilkinson; I said I knew nothing about it; he asked me if I would carry a letter from him to Blannerhasset; I told him I would carry anything, so it was not too burdensome; so he sat down and wrote a letter. He asked whether I wished to drink, for he had chastised [charged] me not to go to any tavern, lest the people should be sifting me with their questions; I drank, and then he showed me a tavern, and told me to go to get my horse fed by the hostler, but not to go into the house; I asked him where I

should find Colonel Burr and Blannerhasset; he said he expected they were at Lexington, at the house of a Mr. Jourdan; he gave me the letter, which I carried. When I got to Lexington, it was Saturday about one o'clock; Mr. Jourdan happened to be in the street and knew me; he said: "Peter, your old master is not in town;" he told me so before I asked him; but, he said, he expected him either that night or to-morrow early. He inquired what was the news in our parts, and I told him; I asked him what I was to do with my horse; he said that he was to be put at the livery stable; he then went up stairs to Colonel Burr, as I supposed; he came down and beckoned me in; he then went up stairs and showed me what room to go in; when I went into the room, there was Colonel Burr. Colonel Burr wanted to know what was the news in our parts; I began to tell him that my business was to prevent Colonel Burr from going back to the island.

Q. Did you not know Colonel Burr at that time.

A. I did not; he had been on the island three times, but I was sick and did not see him. When I told Colonel Burr that, says he "I am the very man involved in this piece of business, and you must tell me all you know;" I said, "If you come up our way, the people will shoot you." I told him it was my sincere opinion that it was not safe for him to come up our way; I told him that I had heard several declare that they had rather shoot him than let it alone; he seemed surprised, and wondered what the people had got in their heads; I told Colonel Burr what excuses I had made for him before; I told them he was going on a great land speculation, but the people said all that was a fib, and that he had something else in his head.

Then Colonel Burr asked me what letters I had? I said two—one was from Mrs. Blannerhasset, and the other from John Smith, of Cincinnati; the letter from John Smith he allowed was for him, and asked me if I was willing he should open it; I told him I supposed it made no difference between him and Blannerhasset, and he might, and handed it to him. He broke the seal open, and showed me that there was a letter inside for himself; he said, See, what I told you was right; and, after some talking, I asked him whether I was at liberty to go down stairs; I went down, and left the opened letter with him. I then went to Mr. Jourdan and asked him whether I was to stay at his house or go to a tavern? He said I was to go to a tavern, and he would pay for me. Mr. Jourdan wished me to go the next day to Millersburg after the saddle-bags left there by Mr. Blannerhasset; I went, and left Mrs. Blannerhasset's letter with Mr. Jourdan, expecting Blannerhasset to go there before me; I returned on Monday by one o'clock, and there Mr. Blannerhasset was come, and preparing to go home. We started, and got ten miles that night; we stopped at a tavern; I went to see after the horses, and he went into the house; there were people drinking in the house, who wanted to know his name; he told them it was Tom Jones; he came out and told me the people in the house had asked, and he had told them his name was Tom Jones, and I must mind and make no mistake, but call him Jones too; so he passed by the name till he got to the Mud Licks. He then told me he was known there, and I must call him by his own name.

Q. When did these things happen?

A. All this was in October, 1806, I believe.

He then began, at every tavern we came to, to inquire for young men—good orderly men—that would be conformable to order and discipline, and would find themselves in rifles and blankets; he allowed that Colonel Burr and he, and a few of his friends, had bought eight hundred thousand acres of land, and that they wanted young men to settle it; he said he would give any young man who would go down the river one hundred acres of land, plenty of grog and provisions while going down the river, and three months' provisions after they had got to the end; every young man was to carry his own rifle and blanket; I agreed to go myself, if I could carry my wife and family, but he said he must have further consultation about that. As we rode together, I began to think, and asked him what kind of seed we should carry with us? He said we did not want any, we should find everything where we were going.

Mr. Wirt. Of what occupation were you on the island? Answer. A gardener.

Mr. Wirt. I put this question that the jury might understand his last observation.

I urged that subject to him several times; at length he made a sudden stop and said: "Peter, between you and me, we are going to take Mexico, one of the finest and richest places in the whole world;" he said that Colonel Burr would be the King of Mexico, and that Mrs. Alston would be the Queen of Mexico, whenever Colonel Burr died; he said that Colonel Burr had made fortunes for a great many in his lifetime, but nothing for himself, but now he was going to make something for himself; he said that he had a great many friends in the Spanish territory; two thousand Roman Catholic priests were enlisted in his corps; that those priests, and the societies which belonged to them, were a strong party; that the Spaniards like the French had got tired of their Government, and wanted to swap it; he told me that the British were also friends to this expedition; and that he was the very man who was to go to England on this piece of business for Colonel Burr; that he had been a friend to Colonel Burr in this business, and had assisted him more than any other man in America.

He asked me if I would not like to go; I said I should certainly like to see my friends there. I then asked him what was to become of the men who were going to settle the lands he talked about? Were they to stop at the Red river, or to go on? He said, You'll see how I'll fix them, when I get them far enough down the river. If they did not conform to order and discipline, he swore by God he'd stab them. I was astonished; I told him I was no soldier, and could not

fight. He said it made no odds, he did not want me to fight; he wanted me to go and live with Mrs. Blannerhasset and the children, either at Natchez or some other place, while he went on the expedition. I talked to him again, and told him the people had got it into their heads that he wanted to divide the Union. He said Colonel Burr and he could not do it themselves. All they could do was to tell the people the consequence of it. He said the people there paid the Government upwards of $400,000 a year, and never received any benefit from it. He allowed it would be a very fine thing if they could keep that money among themselves, and make locks, and build bridges, and cut roads. About two weeks after I got home, he sent me to Dr. Bennet's of Mason county, with a letter. He wanted to know if Dr. Bennet wouldn't sell him the arms belonging to the militia, if he could sell them and keep himself out of danger; if he could, he'd give him a draught upon his friend in Kentucky for payment; if he could not sell them without putting himself in a hobble, he must send him word where they were kept, and he would come and take them away in the night. I was not to give the letter to Dr. Bennet until the doctor promised to deliver it back for me to burn it, for Mr. Blannerhasset told me to do so, and said it contained high treason. I did as he told me, and burnt it. The doctor said he was acquainted with the plot, and could not join in it.

Questioned by the prosecution.

Mr. Hay. When did the boats leave the island?

Answer. It was intended to sail on the 6th December; but they did not come till 10th, (Sunday,) and they sailed on Wednesday night following.

Question. How many boats were there?

A. Four.

Q. How many men from the boats came ashore? A. About thirty.

Q. What did the men do who did not belong to the boats?

A. Some were packing meat, and some were packing other things.

Mr. McRea. Who went off on Wednesday night?

A. Mr. Blannerhasset and Mr. Tyler, and the whole of the party.

Q. At what time of the night? A. about one o'clock.

Q. Did all that went down to the island go away?

A. All but one, who was sick.

Mr. Hay. Had they any guns?

A. Some of them had. Some of the people went a shooting, but I do not know how may there were.

Mr. J. M. Sheppard, (a juryman.) What kind of guns—rifles or muskets?

A. I do not know.

Q. Were there any pistols?

A. I saw none but Blannerhasset's.

Q. Was there any powder or lead?

A. Both; I saw some powder in a long, small barrel like a churn, but I was so employed that I could not notice particularly. Some of the men were engaged in running bullets, but I do not know how many.

Mr. McRae. Why did they leave the island at that hour of the night?

A. Because they were informed that the Kanawha militia were coming down there.

Q. Did you carry some boxes to the boats?

A. I carried a half bushel of candles and some brandy; several boxes were carried, and a great many things of which I knew nothing.

Mr. Hay. Were you on the island when they went off?

A. Yes; they held a council at the foot of the pier, to determine which was the best way to go. Mr. Blannerhasset said, if he went in a canoe, he would be an easy prey. I said to them, "best stick together." And so they determined to stick together. They went off in great haste.

Q. Why did they go in a body?

A. I suppose for security.

Cross-questioned.

Mr. Wickham. You saw General Tupper and Mr. Woodbridge that night?

Answer. Yes; as I went from the boats to the house.

Q. Was Colonel Burr there?

A. No; I did not see him.

Q. Did you understand whether he was in that part of the country at that time?

A. I understood not.

Substance of the evidence of Peter Taylor, on the 9th of September, upon the trial for a misdemeanor.

Mr. Hay then called up Peter Taylor, (H. Blannerhasset's gardener.) He stated that there were about thirty of the party who landed on the island; that Comfort Tyler, as he had understood, had had the direction of them before they arrived there; that Blannerhasset and Love were the only persons whom he recollected that they had taken with them from the island; that he had seen a few arms, and also powder, bullets, and provisions; he recited his interview with Dr. Bennett, (whom Mr. Hay stated had departed from Richmond, in spite of all his admonitions;) he repeated, in the most consistent manner, Blannerhasset's communication to him how they were going to take Mexico, and make Burr its King, and his daughter to be his successor; as also his conversation with Aaron Burr at Lexington. He stated that he saw no appearance of any preparations to settle land; that Blannerhasset, it was true, had originally held out the gift of a certain number of acres to every lively and orderly young man who would accompany him without their families or women, but that he afterwards had avowed the capture of Mexico as the object of these preparations.

TUESDAY, *September* 15.

Peter Taylor was then interrogated about the corn purchased by Blannerhasset on the island. He said that this corn was kiln-dried on the island,

then carried to the mills on the Muskingum and on the Kanawha; that the meal was brought back to the island, but he was not certain whether any had been carried away by Blannerhasset's party.

HENRICO COUNTY, *to wit:*

This day General John Morgan, of Washington county, in the State of Pennsylvania, personally appeared before me, Thomas H. Prosser, a justice of the peace for the county of Henrico aforesaid, and made oath, that the annexed statement of his evidence, as given in the circuit court of the United States for the fifth circuit and Virginia district, upon an indictment in the case of the United States against Aaron Burr for treason, which is contained in the third and fourth columns of the second page of "The Virginia Gazette and General Advertiser," No. 1491, of Vol. XXI, is correctly printed, except as to the variations hereafter mentioned, viz:

In the twelfth line from the bottom of the third column and second page, instead of the word "things" read "subjects."

In the eighth line of the same column and page from the bottom, after the word "fellows," insert "under arms, or imbodied."

In the twenty-ninth line from the top of the fourth column, and second page, between the words "Bradford" and "lived," insert "formerly."

In the sixty-ninth line from the top of the same column and page, after the word "rent," read "interview."

In the seventy-seventh line from the top of the same column and page, after the word "recollect," add "my impression was, that he thought him a fine fellow."

In the ninetieth line of the same column and page, from the top, for "return," read "returned."

In the one hundred and tenth line from the top of the same column and page, instead of "T. E." insert "Thomas B. Hulings."

The said General John Morgan also made oath, that his evidence, stated in the same paper, No. 1492, Vol. XXI, in the second column and second page, is correctly printed with the following variation, viz:

In the forty-eighth and forty-seventh lines from the bottom, instead of "I'll be damned, sir, if you could take the little town of Cannonsburg," read "By God, sir, you cannot take our little town of Cannonsburg."

And that the evidence contained in the said two papers, thus corrected, contained the truth.

JOHN MORGAN.

Given under my hand this 24th day of September, 1807.

THOMAS H. PROSSER.

Evidence of General John Morgan.

WEDNESDAY, *August* 19.

Some time in August last, about this time twelve months, my father put a letter into my hands, signed Aaron Burr, in which he said that himself and his friend, Colonel Dupiester, would dine with him the following day. My father requested me and my brother to go and meet Colonel Burr, which we did, about seven miles distant. After a few words of general conversation, Colonel Burr observed to me, that the Union could not possibly last, and that a separation of the States must ensue in four or five years, as a natural consequence. Colonel Burr made many inquiries of me, relative to the county of Washington; particularly to the state of its militia; the discipline, arms, accoutrements, and the character of its officers. These conversations continued some time, besides other subjects which I cannot recollect, because I did not expect to be called upon in this way. After travelling some miles we met one of my workmen, a likely young man. Colonel Burr said he wished he had ten thousand such fellows under arms or imbodied. At my father's table, during dinner, Colonel Burr again observed that the separation of the Union must take place inevitably, in less than five years. [Shall I give the answers that were made? Mr. Wirt. Perhaps it may serve to connect your narrative better.] I recollect that it was my father who answered him, God forbid! Colonel Burr, in the course of conversation, observed, that, with two or three hundred men, he could drive the President and Congress into the Potomac; and with four or five hundred men he could take possession of the city of New York. After dinner, he walked with me to my brother's mill, and, in course of the walk, spoke of war and military men; asked me if either of my brothers had a military turn? On our return, after I had introduced him to my brother, Colonel Burr said he wished he could see him at the head of a company of grenadiers; he was a fine, stout-looking fellow. These circumstances induced me to speak to my father. I warned him to beware of Colonel Burr; told him that, in the course of that night, Colonel Burr would seek an interview with him, and that I suspected something was going on, I knew not what. The next morning, I rode with Colonel Burr to the town of Washington, about nine or ten miles. We had much conversation, principally on military affairs, and on the state of the militia. Colonel Burr urged the necessity of attending to military discipline. He told me that, in New York, the exertions of a single person (Mr. Swartwout) had produced a great effect. He asked me if I thought I could raise a regiment in Washington county, or whether I could raise one with more facility in New Jersey? [Mr. Wirt. You have lived in New Jersey? Answer. Yes.] At Washington we took a walk, Colonel Burr, Colonel Dupiester, and myself, down town; and I pointed out to him the house where Mr. Bradford formerly lived, who had been at the head of the Western insurrection. He inquired about Mr. Bradford. He was at Baton Rouge, as I believed. I told him his son was in town, and Colonel Burr expressed a wish to see him. Colonel Burr mentioned to me that he had met with several who had been engaged in the Western insurrection, and particularly a Major in the Northwestern Territory (whose name I do not recollect) who had told him, that if he was ever engaged in a similar business, he pledged himself it should

not end without bloodshed. He said that he was a fine fellow. It was on these circumstances that I advised my father to apprize the President of the United States that something was going forward.

Question by the prosecution.

Mr. Hay. When Colonel Burr left that part of the country what course did he take?

Answer. I knew he went to the town of Washington, and from there to Wheeling, as I supposed.

Mr. Wirt. Were the subjects of a separation of the Union and military matters predominant in the conversations of Colonel Burr?

A. I have stated them as they occurred; our conversations were general and mixed, but these seemed to be the leading topics.

Mr. Wirt. Were the conversations ever long on either of these subjects?

A. Never long; they chiefly occurred in a rapid ride.

Mr. Hay. Do you recollect any opinion expressed by the accused concerning Bradford's capacity for such an undertaking as the Western insurrection?

A. I recollect it very well; he said that Bradford was very incompetent to an enterprise of that kind; and that, in such a case, there ought to be the utmost confidence in the leader.

Mr. Parker, (one of the jury.) Which of the Bradford's did he mean, the elder or the younger?

A. The elder; he was speaking of Bradford who headed the Western insurrection.

Mr. McRae. Did he name any particular person as qualified for such an enterprise?

A. No.

Mr. Wirt. At what time in the month of August was this interview?

A. I think between the 20th and 25th.

Mr. Parker, (one of the jury.) Did Colonel Burr make any further remark when he spoke of the Major who said that, if he were engaged in another insurrection, it should not end without bloodshed?

A. No. He spoke of him as a fine fellow.

Q. by same. Did he approve or condemn the sentiment?

A. I do not recollect; my impression was, that he thought him a fine fellow.

Cross-examined.

Mr. Burr. You spoke of a letter from me to your father; do you know whether he had written me, some time before, a letter of invitation to his house?

A. Yes: he had written about a year before to you at Pittsburg; that letter is yet unopened in my brother Tom's bureau; you had left that place before the letter arrived, and he did not know of your being in the Western country on your last visit till he received your note.

Q. Did your father communicate to you our night's conversation?

A. Yes.

Q. Before we rode?

A. No: not till I returned from Washington.

Q. Do you recollect of my having made several inquiries also about the seminaries of learning, and of one that was projected in your neighborhood, and of my suggesting the necessity of encouraging it?

A. You spoke much, too, on that subject.

Q. Was there anything serious in the conversation about the Major?

A. Nothing particularly serious; you mentioned the incident.

Q. Did I seem to know anything of Bradford before you told me?

A. You seemed to know the circumstances of the Western insurrection very well.

Q. Did you not tell me that Bradford was a noisy sort of a demagogue?

A. I did not: I have no objections to give my opinion of Mr. Bradford; I mentioned him to you as a mere lawyer.

Q. Did I seem to know that Bradford lived at Pittsburg before you mentioned it, and pointed out his house?

A. You did not seem to know it.

Q. Who were at dinner at your father's?

A. My father, mother, wife, sister, Colonel Dupiester, Mr. T. Hulings, and my brother Tom.

General Morgan was then called in at the request of the prisoner.

Mr. Burr. What was the situation of your father about the time of my visit?

A. He had lately had a fall, which had done him considerable injury.

Q. I mean as to his capacity. Did you not make an apology to Judge Thilman for the state of his mind?

A. I did tell Judge Thilman that my father was old and infirm, and, like other old men, he told long stories, and was apt to forget his repetitions.

Mr. McRae. Did Colonel Burr draw a comparison between the Eastern and Western people? or what was his reply when you said you would be damned if the little town of Cannonsburg could be taken by so small a force? What was the prisoner's reply to your exclamation?

A. When Colonel Burr said that, with two hundred men, he could drive the President and Congress into the Potomac, I must confess that I felt myself hurt, and replied, with some warmth, "I'll be damned, sir, if you could take the little town of Cannonsburg with that force." Colonel Burr replied, "Confine yourself to this side of the mountain, and it is another thing; or you are right."

Mr. Burr. Do you recollect that the probability of a Spanish war was mentioned?

A. It was a general subject of conversation.

HENRICO COUNTY, *State of Virginia, to wit:*

This 25th day of September, 1807, Colonel George Morgan, of Morgansey, in the county of Washington and State of Pennsylvania, appeared before me, Thomas H. Prosser, a justice of the peace for the county of Henrico aforesaid, and made oath that the annexed statement of his evidence, as given in the circuit court of the United States for the fifth circuit and Virginia district,

upon an indictment in the case of the United States against Aaron Burr for treason, which is contained in the first and second columns of the second page of the Virginia Gazette and General Advertiser, No. 1,492 of Volume XXI., is as correctly printed as the said Morgan can now recollect, except as to the variations hereinafter mentioned, viz:

In the 4th line of the said testimony, instead of "nephews," read "cousins" by the name "Pollock" of North Carolina, then at Princeton College, and a third by the name of "Edwards," the son of Pierpont Edwards, then of Connecticut.

In the 28th line, dele "branded to me" and insert "brought."

In the second line above the cross-examinations, dele the words "these gentlemen wrote a joint," and insert "wrote, or said they would write, as I requested, to the President," or perhaps to the Secretary of State.

And that the evidence contained in the said paper, thus corrected, contains the truth.

GEORGE MORGAN.

Given under my hand this twenty-fifth day of September, 1807.

THOMAS H. PROSSER.

Cut out from a Pittsburg newspaper, called the Commonwealth, dated August 27th, 1806.

The Hon. Aaron Burr was in this town *incog.* for several days previous to Friday last, when he departed, in company with a French or Spanish gentleman, his companion, for Kentucky. Our fellow-citizens, generally, feel anxious to know the object of Mr. Burr's journey, at this time; and as he was perfectly *taciturn* during his stay, many conjectures are afloat. We hope the Western editors will give a good account of him.

PITTSBURG, *August* 21, 1806.

DEAR SIR: Being on my way to Lexington, I learn, with great satisfaction, that a road not very circuitous will take me near your door. I avail myself of the opportunity of one of my attendants, who is going forward with my baggage, to offer compliments and salutations, and to say that if this shall find you at home, I will have the pleasure of dining with you to-morrow and will take the liberty of introducing my friend and fellow-traveller, Colonel Dupiester. We shall leave this after breakfast, and be with you before two.

Accept assurance of the great respect and consideration with which I am, your obedient,

AARON BURR.

I beg to be recalled to the recollection of Mrs. M. and your son.

Evidence of Colonel George Morgan.

WEDNESDAY, *August* 19.

Colonel Morgan, (the father of the last witness.) There has been a long acquaintance between Colonel Burr and myself. He had introduced to my notice two of his nephews, by the name of ———, and a third by the name of Edwards, Pierpont Edwards. I had received many civilities from Colonel Burr in New York, after these things had passed; from which I had formed such an attachment to him, that I should never have forgotten it, had not this late business taken place. About three years ago, Colonel Burr was under a considerable, and as I thought unjust persecution. I had then a younger son, (who is now here,) studying law at Pittsburg. I wished to make him known to Colonel Burr, and wrote to invite Colonel Burr to Morgansey; particularly on account of his persecution; but, in all probability, would have done so without. I enclosed the letter to my son at Pittsburg. Colonel Burr, however, had left Pittsburg before my letter reached it, and it now remains unopened in my son's scrutoire at Pittsburg. On the 24th last August, I received a letter from Colonel Burr, dated at Pittsburg, informing me that he should dine with me the next day. [Here *Mr. Hay* handed the letter to Colonel M., who said the letter was dated on the 21st, and that he had not for sometime seen it, as he had transmitted it to the President of the United States.] This letter was handed to me by a man who called himself Count Willie. Colonel Burr mentioned he had sent it by one of his attendants. I believe my son did not call on me that evening; but the next morning I informed him, if I was able, I should certainly go and meet Colonel Burr; and I requested him and his brother to do it, with a letter of introduction explanatory of their names and their intention. What conversation took place between him and my son, I shall not state.

When Colonel Burr and myself walked out together, he mentioned that Colonel Dupiester was one of the first military characters of the age. I shall pass over the conversation and incidents during dinner. After dinner, I spoke of our fine country; I observed that when I first went there, there was not a single family between the Allegany mountain and the Ohio; and that, by and by, we should have Congress sitting in this neighborhood, or at Pittsburg. We are allowed to sport these things over a glass of wine; but I have no doubt that it will be the case. "No, never," said Colonel Burr; "for in less than five years you will be totally divided from the Atlantic States." The Colonel entered into some arguments to prove why it would and should be so. The first reason was, the produce of the sales of the Western lands being carried to the Atlantic States, and that the people to the West should not be tributary to them. He said that our taxes were heavy; and demanded, why we should pay them to the Atlantic parts of the country? By this time, I took an opportunity to observe "God forbid that any such change should took place, at least in my time!" This observation terminated the conversations as to that particular point. Next, Colonel Burr spoke of the weakness and imbecility of the Federal Government. [*Mr. Wirt.* Who started that subject? Answer Colonel Burr, as one of the reasons for a division.] I do not recollect saying anything on the subject; but it struck my mind very forcibly that all was not right. He said, with two hundred men he could drive Congress, with the President at its

head, into the river Potomac; or that it might be done; and he said with five hundred men he could take possession of New York. What struck me was, that he appealed to Colonel Dupiester if it could not be done, and he bowed assent. There was a reply made to this by one of my sons, that he would be damned if he could take our little town of Cannonsburg with that force. Some short time after this, Colonel Burr went out from the dining room to the passage, and, as he went out, he made a motion to my son Thomas, who did not perceive it, and no person could interpret what it meant; however, as he went out he beckoned to him. They then walked out together, and had some conversation; what that conversation was, I shall leave to my son himself to tell. Soon after, a walk was proposed by some of the company to my son's mill. The observations made by the ladies as to the probable designs of Colonel Burr it is unnecessary to mention; but our women are all Democrats. When they returned, my son told me to be cautious, and said, "You may depend on it, Colonel Burr will this night open himself to you; he wants Tom to go with him." After the usual conversation, Colonel Burr went up stairs, and, as I thought, to go to bed. My daughters went to bed. My wife was reading to me, as is usual when the family have retired. About eleven o'clock, and when I thought he had been asleep an hour, she told me that Colonel Burr was coming down, and, as she had heard my son's conversation, she added "Now you'll have it." Colonel Burr came down with a candle in his hand; Mrs. Morgan immediately retired. The Colonel took his seat by me; he drew from his pocket, a book which looked like a memorandum book. After looking in it some time, he asked me if I knew a Mr. Vigo, a Spaniard, at Vincennes. I replied, yes; I knew him, I had reasons to know him; one was, that I had reason to believe that he was deeply involved in the British conspiracy of 1788, as I supposed; the object of which was to separate the States, and which General Nevill and myself assisted to suppress. I called it a nefarious scheme to aim at the division of the States; I was careful to put great emphasis on the word *nefarious*. Colonel Burr, finding what kind of a man he had to deal with, suddenly stopped, thrust into his pocket the book, which I saw had blank leaves in it, and retired to bed. I believe I was pretty well understood. The next morning, Colonel Burr and Colonel Dupiester went off before breakfast, without my expecting it, in company with my son; and from that time to this, I have not seen him, but in this place. My son, on his return, gave it as his opinion, (his mother and I having already made up ours) that I should apprize the President of our impressions, and point out a mode by which Colonel Burr might be followed step by step. [*Mr. McRae.* In your conversation at the table, after your son had said he would be damned if your little town of Cannonsburg could be taken with such a force, do you recollect that the prisoner drew any comparison between the Eastern and Western people? Answer. Yes, perfectly; he said, "keep yourself on this side of the mountain, and you'll never be disturbed;' by which I understood him to mean disunion.] There is one more circumstance which I must state to the court. The Sunday after, the judge of our circuit court dined with me. I requested him to mention the circumstances to General Nevill, and invited him the following Sunday to dinner, with Judges Thilman and Roberts, for I had business of the first importance to communicate. They did not dine with me on that day, but they did on the following Sunday. These gentlemen wrote a joint letter to the President, informing him of my communications to them.

Cross-examined.

Mr. Burr. Are you certain that I came down in the night?

A. Yes. Mrs. Morgan said, Colonel Burr is coming down—now you'll have it.

Q. What sort of a book was the one I had in my hand? Was it bound?

A. It was not so large as this; I do not recollect whether it was bound, as it would not be very polite in me to take particular notice of such things when gentlemen are at my own house.

Q. When you spoke of a nefarious plan, to what transaction did you allude?

A. To Vigo's plan, which I conceived was intended to dissever the Union.

Q. Did the ladies take any part in the conversation at dinner?

A. They felt it.

Q. Who were present when Judge Thilman saw you?

A. General Neville and Judge Roberts.

Q. Was there any other from Pittsburg?

A. None.

Q. Your conversation was then jocular about the moving of Congress to Pittsburg?

A. I spoke in a jocular manner; but I was seriously of that opinion, and am so still.

Q. Did not some person at table say a movement of that kind would produce a separation of the Union?

A. I do not recollect.

Q. Did you not once live on the Mississippi?

A. I did, with the approbation of my country.

Q. Where was it?

A. At New Madrid.

Q. On which side of the Mississippi?

A. The west.

Q. In the Spanish Territories?

A. With the approbation of the Spanish Government.

Q. How long did you live there?

A. About forty days. I went from that place to New Orleans, where I detected a British spy.

Q. In what year?

A. In '88.

Evidence of Jacob Allbright.

WEDNESDAY, *August* 19.

Mr. Hay. Our object is to prove by his testimony, the actual assemblage of men on Blannerhassel's island. It goes of course to prove directly the overt act.

Jacob Allbright. The first I knew of this business was, I was hired on the island to help to build a kiln for drying corn; and, after working some time, Mrs. Blannerhasset told me that Mr. Blannerhasset and Colonel Burr were going to lay in provisions for an army, for a year. I went to the mill where I carried the corn to be ground after it had been dried. I worked four weeks on that business in the island; last fall, (or in September,) after Blannerhasset had come home—he had been promising me money for some time—I stept up to him; he had no money at the time, but would pay me soon. Says he "Mr. Allbright, you are a Dutchman." But he asked me first and foremost, whether I would not join with him, and go down the river. I told him I did not know what they were upon; and he said "Mr. Allbright, we are going to settle a new country;" and I gave him an answer, that I would not like to leave my family; he said he did not want any families to go along with him; then he said to me "You are a Dutchman, and a common man; and as the Dutch are apt to be scared by high men, if you'll go to New Lancaster, where the Dutch live, and get me twenty or thirty men to go with us, I will give you as many dollars." I went home then, and gave him no answer upon that. In a few days after, a number of boats came and landed at the island; the snow was about three inches deep, and I went out a hunting; I was on the Ohio side; I met two men; I knew they belonged to the boats, but I wanted to find out; and they asked me whether I had not given my consent to go along with Blannerhasset down the river. As we were talking together, they named themselves Colonel Burr's men, belonging to the boats landed at the island. When they asked me whether I had not consented to go down with Blannerhasset, I put a question to them; I told them I did not know what they were about; and one of the gentlemen told me they were going to take a silver mine from the Spanish. I asked the gentlemen whether they would not allow that this would raise a war with America; they replied no, and said that as there were but a few of them, if they went with a good army, they would give it up, and nothing more would be said about it. I had all this conversation with two of the men; these men showed me what fine rifles they had; then I went to the island, and Blannerhasset paid me off in Kentucky notes; people, however, did not like these notes, and I went over to Virginia to get them changed; I got two of the notes changed, and one, a ten dollar note, was returned on my hands. I went to the island again the day the proclamation came out; but before I went to Blannerhasset's house, I heard he was not at home, but at Marietta; I went to the Virginia side, where I met three other men belonging to the boats, with three complete rifles; they made a call upon me to take them to the island in my canoe, and I excepted to it, but afterwards I carried over the third man, who stood close by my canoe when I came down to it. After being some time on the island, I went down to the four boats; Blannerhasset was not at home yet, and I saw some of the boat people shooting at a mark; they had a fire between the bank and the boats; I went up to the house, and Blannerhasset came home; he seemed very much scared; one of the men came up to ask him for something, and he told him "Don't trouble me, I have trouble enough already." He went up to his chamber, and I saw no more of him; I asked an old gentleman to go up to his chamber and change my note for silver; he did go and brought me silver. By and by I heard that they were going to start that night; thinks I, "I'll see the end of it." This was the night of the very day that Blannerhasset got back from Marietta; he got back before night; when night came on, I was among the men, and also in the kitchen, and saw the boatmen running bullets. One of them spoke out to the others, "Boys, let's every one of us mould as many bullets as we can fire twelve rounds." After that, I saw no more till after twelve o'clock at night; then Blannerhasset came down from the chamber and called up some of his servants; he had four or five trunks; there were not trusty hands enough to carry them to the boats, and some person called after my name, and asked me to help them; and I carried one of the trunks and moved along with them; when we got down, some person, I don't particularly know, but think it was Blannerhasset himself, asked me to stand by the trunks till they were put in the boats. When the last of them went off, I saw men standing in a circle on the shore; I went up to them; perhaps they were five or six rods from the boats. The first thing I heard was, their laying plans how Blannerhasset and Comfort Tyler should get safe by Galliopolis; one Nahum Bent was called forward, and, when he came, Blannerhasset asked him whether he had not two smart horses; Nahum Bent answered no, he had but one; then Blannerhasset told him to go to Captain Dennie and get his sorrel horse; and Nahum Bent told him that the sorrel horse had no shoes on; and Blannerhasset said the roads were soft and would not hurt the horse. Blannerhasset told Nahum Bent to meet him and C. Tyler with the horses somewhere about Galliopolis; Bent inquired how he was to find him out; should he inquire for him? "No." "Have you no friends there? "No." Mrs. Blannerhasset then came forward, and she told Blannerhasset and C. Tyler that they must take a canoe and get into it before they got to Galliopolis and fall down the stream of the Ohio, for nobody would mind two people going down the stream; she said she would pay for the canoe; N. Bent was told to meet them above Galliopolis about daybreak, and then they might go round Galliopolis. Then a man by the name of Tupper laid hands upon Blannerhasset, and said, "Your body is in my hand, in the name of the commonwealth," or such a word as that. As quick as Tupper made that motion, there were seven or eight muzzles levelled at him. Tupper looked about him, and said, "Gentlemen, I hope you will not do the like." A man next to me, about two yards off, who had a shot gun said, "I'd as lieve as not." Tupper then changed his

speech, and said he wished him luck, and safe down the river. Tupper before told Blannerhasset he should stay and stand his trial; but Blannerhasset said no; the people in the neighborhood were coming down next day to take him, and he would go. Next day after I saw the Wood county militia going down. The people went off in the boats that night between twelve and one o'clock.

Q. All?

A. All but one, who was a doctor. All had some kind of arms.

Q. How many were there in all?

A. About twenty or thirty, in all, to the best of my knowledge, but I did not count them. All the men, however, were not on shore; some were in the boats; every man I saw had arms of some sort.

Q. At what time of the year was this?

A. I do not recollect the particular time; I recollect the year, but not the month.

Q. Do you recollect whether it snows in that climate in September?

A. I do not recollect; I know not the month, only the year; it was last Fall.

Examined by the counsel for the prosecution.

Mr. Wirt. Had you seen Colonel Burr on the island?

Answer. Yes.

Q. Was he there before Blannerhasset went to Kentucky?

A. He was.

Q. Under whose command were the boats?

A. Comfort Tyler and Mr. Knox were the commanders, I believe.

Q. Did the boats quit the island at the time of hearing about the proclamation?

A. Yes.

Q. Did the county militia go there next day?

A. Yes.

Mr. Burr. Did you see Peter Taylor there that night?

A. I did.

Q. Did you hear him converse with Blannerhasset or any other person?

A. I do not recollect.

Mr. Wirt. How long did Aaron Burr remain on the island?

A. I do not recollect.

Q. How long was he there before the arrival of the boats?

A. About six weeks.

R. E Parker, (one of the jury.) How long was it from Colonel Burr's leaving the island to Blannerhasset's leaving it?

A. I cannot tell; I did not take particular notice; I do not live on the island.

Q. How long did the boats continue there?

A. I don't know.

Cross-examined.

Mr. Burr. Do you know General Tupper?

Answer. Yes.

Q. Is that the person?

A. Yes.

Q. When the muskets were levelled at him, did they seem to have a mind to hurt him?

A. Yes; a gentleman near me said, "I'd as lieve shoot as not."

Mr. Burr. You said differently on a former occasion; don't you recollect saying before, it looked like exercising?

A. I do not.

[A desultory conversation here ensued between the opposite counsel. Mr. Burr professed that it was his intention to degrade the witness by invalidating his credibility. The cross-examination proceeded.]

Mr. Burr. Have you not been examined before?

A. Yes.

Q. By whom?

A. By Mr. Jackson.

Q. Had he not printed questions in his hand?

A. He had a paper in his hand.

Q. Did he set down your answers?

A. Yes.

Q. How long after the guns were pointed at General Tupper before the men went to their boats?

A. I do not recollect; anything that I am not certain of I cannot speak to.

Q. Was Mrs. Blannerhasset there when the guns were pointed?

A. Yes.

Q. Was Tupper inside of the circle?

A. Yes.

Q. Was she, too?

A. I don't recollect.

Q. Did you see Mr. Woodbridge there?

A. I don't know him.

Q. How long did you work with Blannerhasset?

A. Six weeks.

Q. At what time was it you saw me there?

A. I do not recollect.

Mr. Burr. The counsel for the United States know, I presume, this circumstance, and have testimony to ascertain it.

Mr. Hay. We have not, as far as I am informed.

Mr. Burr. I will state that it was the last day of August and first of September that I was on the island.

Mr. Anthony, (one of the jury.) Did you see any powder?

A. No.

Mr. Hay. Were you in the boats?

A. I was not.

Mr. Burr. Where does General Tupper live?

A. In Marietta.

Q. Does he not belong to the State of Ohio?

A. Yes.

Q. When did you first know him?

A. Last Fall.

Mr. Burr then asked the clerk for the statement which he had taken of Allbright's testimony, when it was submitted to the court on a former occasion, on the motion for holding Colonel Burr to higher bail. The clerk handed him the copy, and the prisoner proceeded with the examination:

You said before, that the men who raised their muskets against Gen. Tupper were not in earnest?

A. That was a piece of my opinion. I did not know whether they were in earnest, as there was no quarrel among them, and no firing afterwards.

Mr. Burr. I beg the court to call on the prosecution for the deposition of this witness, taken before John G. Jackson.

Mr. Hay. Can gentlemen, when they please, thrust their hands into my portfolio?

Chief Justice was not satisfied that the court had a right to call for the affidavit.

Mr. Wickham said it was obvious that there were certain suspicions attached to the credibility of the witness, and that it was their desire to compare his present testimony with his former affidavit.

Mr. Hay objected that Mr. Jackson might not have taken down the testimony of the witness in his language, but couched it in his own; hence there might be an apparent variation between the present evidence and the affidavit. Besides, the witness might not have recollected a great many circumstances at that moment, which have subsequently occurred to his mind since he was set to thinking upon them.

Mr. Burr. We have a right to coerce this paper; if gentlemen will not surrender it, I may at all events avail myself of their refusal. My object is to prove such a diversity between the statements of the witness at different times, as may destroy all faith in his recollections.

Mr. Hay. Then, sir, although I might retain this paper, the gentlemen are welcome to make all the use of it they can; take it. [Mr. Hay thereupon delivered them the paper; but no use was afterwards made of it.]

Mr. Burr then proceeded. Did you say that all in the circle had arms?

A. All that I saw.

Q. How many were there in the circle?

A. I did not count.

Q. What kind of guns had they?

A. Rifles and shot guns.

Q. Did you see any guns with bayonets?

A. I saw none.

Q. When did you see most arms, in the day or in the night?

A. I saw more of them in the day; but it was in the night that I saw most arms in their hands.

Mr. Parker, (a juror.) Why did you think that most of them had arms?

A. Because I was with them almost all night; in the day I saw some of them shooting at marks, and I saw other arms at that time lying upon the beach. From the evening, until they started, I think I saw arms enough to arm all the men who were there.

Mr. Wickham. Did you see them all with arms at once?

A. No.

Q. Did you know the men who had arms?

A. No.

Q. How, then, are you certain that you did not see the same arms at different times in the hands of different persons?

A. I don't know, certainly.

Mr. Burr. If gentlemen have now done with the witnesses as to the overt act, or when they have done, I will thank them to inform us; for then we shall have some considerations to offer to the court.

Mr. Hay. We have other additional testimony to offer on this very point.

Examination of William Love.

Mr. Hay. Were you on Blannerhasset's island?

Answer. Yes; but not there at the time when Colonel Tyler's boats arrived there; I was then at Marietta; and it was on Sunday that I went down in a skiff with two barrels of salt.

Q. How many boats were at the island?

A. Four.

Q. How many men?

A. I cannot tell you; but I suppose about twenty or twenty-five, belonging to Colonel Tyler's boats.

Q. Did you see any arms?

A. I saw the men had rifles; I know that Mr. Blannerhasset took away with him two blunderbusses, one pair of horse pistols, a pair of pocket pistols, and a dirk; some fusees were put in the boat, but not more than three or four.

Q. And what arms had Tyler's men?

A. Pistols, dirks, and rifles, they brought there; but not all were armed with rifles; I know not whether they were armed with different things. Being Mr. Blannerhasset's servant, (that is, his groom,) I went down the river with him.

Q. Did you see Taylor and Allbright there?

A. I knew Peter Taylor very well, and I saw Allbright; I saw Mr. Woodbridge too.

Q. What time did they set sail?

A. We were the last to embark, and we set off between 12 and 1 o'clock; we parted with General Tupper in the greatest friendship.

Q. Did you see the prisoner on the island?

A. I never saw Colonel Burr on the island; I first saw him at Natchez, about two and a half years ago.

Q. What took place after you left the island?

A. That night was very cold; the next morning we stopped and made fires. Mr. Blannerhasset and Colonel Tyler went ashore and called the company together; and the best I could make out was, that the Governor of Ohio had issued State warrants against Mr. Blannerhasset and Tyler; and that they wanted to make their escape as fast as possible. I went down with the party to Bayou Pierre, where—

Mr. Burr expressed a wish that the attention of the witness should be at present confined to the transactions on the island.

Mr. Martin. Gentlemen had better confine themselves to facts within the district of Virginia. When they travel beyond the district, we shall have some important questions to bring forward; we shall object to the production of such evidence.

Mr. Hay acquiesced, for the present, in this arrangement.

Cross-examined.

Mr. Burr. Were not some of Mr. Blannerhasset's clothes put up in the boats?

Answer. Yes.

Q. Were not his books put up in boxes and trunks?

A. None, that ever I saw.

Q. How long had you lived with Mr. Blannerhasset?

A. Ten or twelve days.

Q. How many guns had the party?

A. I do not know; a great many of the men went out a hunting.

Q. Did you see anything like military appearance?

A. The men were in a state of preparation to defend themselves, because they expected people from the mouth of the Kanawha to attack Blannerhasset and the island. And, to the best of my opinion, they did not mean to be killed without some return of the shot. It was said at Marietta that the people of Kanawha were to attack him; and I suppose they would have done the best to resist. I should be sorry if a man slapped me on my face without returning the blow.

Q. Was there no disturbance among the party on the island?

A. None: I did not part with my friends in England more comfortably than in parting with the people on the island.

Mr. Parker, (a juror.) Did you ever see all the men with arms?

A. I cannot say. When I got to the mouth of Cumberland river, I saw a chest of arms opened.

Mr. Burr. Were any chests of arms put into the boats at the island?

A. Not that I saw. They might have been put on board without my seeing them. Many things were put into the boats before I got in.

Mr. McRae. Was the chest which you saw opened at the mouth of Cumberland the same as those that you saw go from the island?

A. No.

Q. What did you think of this business?

A. I understood the object of the expedition was to settle the Washita lands.

Mr. Hay. Were the persons who went from that island young, active men?

A. Yes.

Mr. Burr. What kind of looking men were they?

A. They looked like gentlemen, such as live upon their own property.

Q. Did they look like men used to work?

A. They did not.

The witness added that Mrs. Blannerhasset was at the boats when they started, and that the night was rainy and freezing.

Examination of William Love, continued.

FRIDAY, *September* 18.

Mr. Hay. Did you not go down with the boats?

Answer. I went down from Mr. Blannerhasset's island; I considered myself as his servant.

Q. Did you see any boxes of arms?

A. I saw one chest in Mr. Floyd's boat.

Q. How many men went from Blannerhasset's island?

A. About twenty-five.

Q. Did any more men join you on the way?

A. None.

Q. Were there any other boats at the mouth of Cumberland?

A. Some, but not belonging to our party.

Q. Did any men join you before you got there?

A. Mr. Blannerhasset did.

Q. How many boats went from the mouth of Cumberland river?

A. I do not recollect how many.

Q. Were there ten—were there six?

A. There were more than six altogether.

Q. Did no one join you at the mouth of Cumberland but Colonel Burr?

A. Yes, some more.

Q. Who were in the other boats?

A. Mr. Floyd had joined us with three boats at the falls of the Ohio: one was loaded with provisions, and the rest had provisions likewise.

Q. How many men were in those boats?

A. I do not recollect?

Q. Were there twenty?

A. There were about eight.

Q. How many boats were there in all?

A. There were four of Colonel Tyler's; two of Colonel Burr's, from Nashville; one of Mr. Ellis's, and two of Mr. Floyd's, who joined at the falls of Ohio; and Captain Dean's boat, called the commissary boat, and one small boat of Mr. Blannerhasset's.

Mr. Hay. Tell me what you know about the arms, and recollect what you said before on this subject. [Counsel for the accused objected to this mode of interrogation.] How many chests of arms did you see at the mouth of Cumberland?

A. I saw one chest and a box with rifles; there were several other chests like that one, but whether they contained Mr. Blannerhasset's books, or the arms, I am not able to say.

Q. What was the size of the chest?

A. Of course, as long as a musket.

Q. But of what depth?

A. I never measured the dimensions, but it was about as deep as my knee.

Q. Could you straddle over it with your legs?

A. I could not.

Q. Where did you first see this chest?

A. At the mouth of Cumberland.

Mr. McRae. What sort of arms?

A. French.

Q. I mean of what form and nature—were there any bayonets?

A. There were.

Q. Was this box opened?

A. It was opened by the carelessness of the people who took it in the boat.

Q. What kind of chest was it?

A. It was rough.

Q. Were there any others of the same appearance?

A. Yes, but I know not their contents.

Q. Do you recollect one thing, were these chests heavy? A. They were.

Q. Did you see any other military apparatus; any bullets?

A. I did. There were some bullets in a barrel, standing at the bow of one of Colonel Tyler's boats. Some said there were about six hundred in it.

Mr. Wirt. Did you see any powder?

A. I am not certain whether I saw one or two, but I am certain I saw one tin canister of powder, that was put on board at Blannerhasset's island.

Mr. Blannerhasset. You said you saw the boxes that were said to contain my books in the commissary boat; did you notice them?

A. I did not see them.

Q. Did any one tell you that I had put arms on board?

A. No one.

Mr. Hay. Did you go ashore at the mouth of Cumberland?

A. I did.

Q. What passed there?

A. All the young men went up. Colonel Burr wanted them to come up for him to pay his addresses to them?

Q. Well, and where did he receive them?

A. A little piece above the bank.

Q. You did not see them form a circle?

A. No; I was not with them.

William Love called in again.

MONDAY, *September* 21.

Mr. Hay. Where did you separate from the party?

Answer. At Bayou Pierre.

Mr. Hay. State the circumstances which induced you to leave them?

A. The boat was going down to Natchez, and I went down in it.

Q. What boat?

A. The boat with two horses in it.

Mr. Wirt. Did you go in Boyce's boat to Natchez?

A. Yes.

Mr. Hay. Did you go in consequence of any direction from Mr. Blannerhasset?

A. I did not.

Q. Why did you leave them?

A. I was not in the party, and I thought I might as well leave them.

Q. Was there no particular circumstance as to Mr. Blannerhasset, which induced you to do it?

A. Yes; when I was in the boat Mr. Blannerhasset ordered me out, for he wanted to speak to the men in my absence. I was not pleased at this, as I thought my life as sweet as the rest of them. Captain Elliot, however, came and told me I might join as a volunteer, and gave me a musket. I went over to the party; but finding that I could not keep as high as the rest of them, I got discontented, and was determined to go to Natchez.

Q. In what boat did you see the chest of arms?

A. In Major Floyd's boat.

Mr. Wirt. Do you know any anything of the guard?

A. I was not there at that time.

Mr. Hay. In what boat were the other chests?

A. I do not say they were arms, but I saw some boxes on board of Captain Dean's boat.

Mr. Wirt. Did you say you had no other reason for quitting but because you could not keep up appearances?

A. None.

Cross-examined.

Mr. Burr. Who brought you round here from New Orleans?

Answer. General Wilkinson. I was introduced to him by Sargeant Dunbaugh, before I was subpœnaed. Every one of the party whom he could find was carried to the General.

Q. Did General Wilkinson ask you any questions?

A. He asked some.

Q. Was this before or after you were subpœnaed?

A. Before.

Q. Did you receive any money?

A. I received about twenty dollars from the military agent after I was subpœnaed. Since I came here I have refunded it to the marshal.

Testimony of Thomas Hartley.

FRIDAY, *September* 18.

Mr. Hay. Were you at the mouth of Cumberland?

Answer. No; I was at Fort Massac when the boats were there; I had left it two weeks before.

Q. You were with Colonel Burr at Fort Massac?

A. I was. [Colonel Burr objected to this question; Fort Massac was in the Indiana Territory.]

Q. Did you descend the Mississippi, and with whom?

A. With Mr. Fort and Mr. Hopkins.

Q. Where were you joined by Mr. Burr's party?

A. Just below Fort Massac. They passed the fort in the night, and we joined them next morning.

Q. How many boats had they?

A. About eight or ten.

Q. Do you know whether they had any arms in the boat?

A. I saw none but fowling-pieces.

Q. Did you descend the river with them?

A. Yes; I went to New Madrid by the directions of Colonel Tyler.

Q. Were you not left behind to enlist men?

[The counsel for the accused objected to the principle as well as form of this question. After some discussion, the Chief Justice decided that the principle of the question might be relevant.]

Mr. Hay. Will you state, then, for what purpose you were left behind?

A. All the boats landed at New Madrid on New Year's day, and stayed four days. Mr. Hopkins and Mr. Wood, and myself, went before to get more men. We got two, and some more joined at Nantes-de-Grace.

Q. On what terms did they join?

A. At twelve and a half dollars a month, and one hundred acres of land besides.

Mr. McRae. And what services were to be performed?

A. They were to go to the Washita country, and also to descend to New Orleans to work on Colonel Burr's boats.

Mr. Wirt. Was Colonel Burr looked on as the head of this party?

A. He was.

Q. Did you and these recruits understand that they were to be placed under Colonel Burr's command?

A. They were to be delivered to him, and to go on board his boats.

Cross-examined by the accused.

Mr. Burr. Who wrote the articles under which they were engaged?

Answer. Mr. Hopkins.

Q. Repeat them?

A. I do not particularly recollect them.

Q. But there was something about the Washita lands?

A. They were to go there after they had gone to New Orleans.

Mr. Wirt. These men who were engaged in New Madrid, did they join the detachment?

A. They did, at the mouth of Cole's creek.

Q. Do I understand that the sole object was the settlement of the Washita lands?

Mr. Botts objected to these questions. How could these transactions affect Colonel Burr, when they took place in his absence? The objection was overruled, and Mr. Hartley replied, that the contract declared they were to serve for six months; that they were to settle on the Washita lands, but that they were to go on to New Orleans.

Mr. Wirt. Did you see the men assembled before they arrived at the Chickasaw Bluffs?

A. I did not overtake them before they got to Cole's creek.

Mr. Burr. You said they were to go to Washita and to New Orleans; were they to go in *any* event?

A. They were to go to the Washita, but the articles did not specify what business they were to follow; the only service which was mentioned was, that they were to work the boats down.

Mr. Baker objected to this kind of evidence. He contended that the best sort of evidence ought in every case to be produced, and that no *paper* ought to be mentioned which was not exhibited in court. The objection was overruled; when Mr. Hay asked the witness whether he was certain they were to go to New Orleans first?

A. I am; I recollect the articles were read after we got into the boat.

Mr. McRae. And they were to serve six months?

A. They were.

Examination of Simeon Poole.

THURSDAY, *August* 20.

I never was on the island at that time, but was opposite to it; I saw boats and men there, if I mistake not, about the 10th of December. I arrived opposite the island about dusk, at the distance of about 150 or 120 yards from it. I do not know how many boats were there. I saw people walking about in the evening; and in the course of the night they built a fire; and I saw some persons by the light that appeared to be armed, and as if they were sentinels.

Mr. Hay. Why did you think they were?

Answer. I do not know they were, but they appeared so to my view. I did not go over that night, nor did I offer to go. Boats were passing and repassing during the night from the island to the main land, which I supposed belonged to the island; not large boats, but small craft. I did not speak to them. I stood as much undiscovered as possible, as I was authorized by the Governor of Ohio to apprehend Blannerhasset, and I went for that purpose.

Question. Were there any indications of arrangements about a watchword?

Answer. Yes; in the evening I saw some boats cross, when a particular word was given. When the people on the Ohio side wanted to go across, they would hail for a boat; the people on the island would ask "what boat?" If the answer was "I's boat," the boat immediately put off.

Cross-examined.

Mr. Burr. How long did you stay out that night?

Answer. Perhaps till 10 o'clock.

Question. Was it not cold enough to render a fire pleasant?

Answer. It was.

Question. Is it not usual for boats to build fires on the banks when it is so cold?

Answer. It is.

The witness also stated, in the course of his examination, that there seemed to be a good many men on the island; that lanterns were passing during the night between the house and boats, as if there was business between them; that he could not say whether the persons whom he had called sentinels were not merely loitering around the fire; that he thought it likely that, if he too had used the watchword, the boats would have put off for him; that he heard several hails from the Ohio side that did not give the word, and no boat came from the island; but a boat always came when that answer was given. He himself was on the Ohio side.

Examination of Maurice P. Belknap.

Mr. Hay. Will you tell us, sir, what you saw on the island?

Mr. Belknap. On the evening of the 10th of December I was at the island of Mr. Blannerhasset. I arrived there between 8 and 9 o'clock in the evening. I hailed a boat, and they asked my name. Having given it, a skiff was immediately sent over, with two of Blannerhasset's servants. Having crossed, I met with Mr. Woodbridge, who returned to the house with me. When I went into the house, I observed a number of men, who, from the promiscuous view I had of them, might have been about twenty. The two or three I noticed near the door had rifles, and appeared to be

cleaning them. These were all the arms I saw, for I merely passed through the room where they were. Near the place where I landed, I noticed two or three boats, and people about them. It was a dark evening, and the light in the boats was the only circumstance which made me notice them.

When cross-examined, Mr. B. said that he had given no watchword when he hailed, but only his name. He was not certain whether any other person had crossed during the night. He saw Mr. Dana there, but does not know at what time he crossed.

The testimony of Maurice P. Belknap continued.

WEDNESDAY, *September* 9.

I was requested by Mr. Blannerhasset to carry a letter to John Jordan, at Lexington, Kentucky. In that letter was enclosed one to Colonel Burr. Some time previous to Blannerhasset's asking me to go to Lexington, I stated to him that I believed the expedition was an unlawful one. I showed him a letter which I had received from one of my friends, and told him I would have nothing to do with the expedition. He declared that it was not unlawful. For that reason, he read to me his letter to Colonel Burr. In that letter, he, in substance, congratulated Colonel Burr on his acquittal at Lexington, and that the grand jury did not find a bill against him; he mentioned the state of the boats building on the Muskingum, though I do not particularly recollect what he said concerning them.

[Here Mr. Belknap was asked at what time was this? He answered, about the middle of November, 1806.]

The letter mentioned likewise the quantity of provisions that he should have to take down the river with him; (I particularly recollect corn meal as one of the articles;) and also that he should probably take his family down with him. The letter was of considerable length; I cannot recollect half of it. I delivered it to Mr. Jordan. He broke the seal of the cover addressed to him, and requested me to take the enclosed one to Col. Burr, at Frankfort. I carried it to Frankfort, and delivered it to Colonel Burr: and took a letter back from him to Blannerhasset. Colonel Burr, before he closed his letter, handed it to me; I read a part of it, and asked him an explanation of a part which I did not understand. He then took it and read to me the whole, as I supposed. The substance was, that he thanked Mr. Blannerhasset for his exertions in preparing the boats; he stated he should probably leave that place in eight days for Nashville; that he should probably go down the river before Blannerhasset; that he was glad to hear that his family was going down; and that he would procure for them a comfortable settlement at Natchez or at New Orleans, until they could be better situated on the Washita; he requested Blannerhasset to make all possible speed, as the probability was that the river would close soon.

Examined by the counsel for the United States.

Mr. Hay. Do you recollect that he stated any other reasons?

Answer. No.

Question. Did you carry any verbal instructions?

Answer. Yes; Burr requested Blannerhasset to have the boats in the day time to carry a white flag, and in the night a lamp.

Question. Believing, when you were first informed of this expedition, that its object was lawful, had you not acceded to it?

Answer. Yes.

Question. Supposing its object was proper and lawful?

Answer. Yes; Mr. Blannerhasset said the officers of Government knew and approved of it.

Mr. McRae. Did he mention the object of the enterprise?

Answer. He stated that he expected there would be a war with Spain; and, on that event, those who went down the river would join the regular army, and go against the Spaniards. If there was no war, they would then make a settlement on the Washita. He mentioned several persons to me who had joined it; among the rest he named General Eaton and Mr. Gallatin; he named Gen. Wilkinson too.

Mr. Wirt. Did you go down with him?

Answer. I did not.

Question. What prevented you?

Answer. On my return, I found in the post office a letter for me from young Mr. Danielson, General Eaton's son-in-law, stating the substance of General Eaton's deposition. I repeated this important contradiction of one of Blannerhasset's statements to a number of my friends; and this occasioned many to abandon the expedition, finding they had been deceived.

Mr. Hay. Had you any conversation with Col. Burr?

Answer. No; he only asked me the prospect as to the boats and the number of men; I had very little conversation with him.

Mr. McRae. You say that you and many others withdrew from the enterprise on finding yourselves deceived?

Answer. Yes; I recollect that Mr. Cushing, Mr. Dana's brother, and several others from Marietta, forsook it.

Mr. Hay. Did you carry no message from Burr to Blannerhasset, warning them to depart in consequence of danger?

Answer. No; nothing but what I have related, except that he said it appeared, from the newspapers, that the public mind was much agitated; that, therefore, there might be some difficulty in getting down the river; but he hoped they would not oppose the constituted authorities.

Question. Were the men preparing to depart when you got to the island?

Answer. Yes; I was surprised to find so many men in the hall; they appeared to be in confusion; and one of them was wiping a gun. I supposed their number to be about twenty.

Mr. Wirt. When Burr spoke of those boats and

men, did he speak of them as one having authority over them?

Answer. He spoke of them as one concerned; I do not recollect that he said anything about authority.

Mr. McRae. When he spoke of the people going to descend the river, did he call them *his* people?

Answer. I do not recollect that; but he was speaking of the people who Blannerhasset had informed him were coming down.

Question. Did he speak as being in connexion with them?

Answer. He did.

Mr. Hay. Did you hear nothing of the proceeding of the Legislature of Ohio before you carried the letter?

Answer. Not till my return.

[The Chief Justice here observed that that Legislature did not meet till afterwards. Colonel Burr said "the Legislature did not meet till the 4th of December; and Frankfort, where Mr. Belknap saw me, is about two hundred miles from the island. *Mr. Hay.* I did not know the date of Mr. Burr's letter. *Mr. Belknap.* It was dated about the last of November or 1st of December; and I returned to the island about the 10th of December.]

Mr. McRae. Upon your return to the island, had you any private conversation with Mr. Blannerhasset?

Answer. Yes.

Question. Did he make any inquiries concerning Colonel Burr?

Answer. He asked about his health, and the probability of his going down the river.

Question. Did nothing of any moment occur relating to Blannerhasset's departure?

Answer. Nothing that I recollect.

Question. Did he not state the reasons of his departing so precipitately?

Answer. He said he expected some difficulty, and had detained Tyler some days; he had kept his proceedings secret, and apprehended some danger from the people of Kenawha, if he did not depart immediately.

Question. Did you carry no despatches for Jordan?

Answer. None.

Mr. Wirt. Did you understand both from Blannerhasset and Burr that they were connected in the enterprise?

Answer. Yes.

Mr. McRae. Was there much rumor and noise among the people on this subject before you went to Lexington? Answer. Yes.

Question. Was it not the opinion of the people that they intended to invade Mexico?

Answer. There were various opinions concerning them.

[Mr. Martin and Colonel Burr both objected to this question as improper.]

Question. Did Colonel Burr ask you about the state of the public mind?

Answer. Yes; he asked me what was going on abroad: such was his expression; and I told him.

Question. Did he make no other inquiry?

Answer. He asked if if I had seen anything in the papers from the Government on this subject. I answered that I had not.

Mr. Hay. What did he say when you mentioned that alarms had been excited?

Answer. He said they proceeded from wrong impressions.

Mr. McRae. What invitations were held out to induce you to join in the enterprise?

Answer. None particularly, except that if, when I descended the river, I should not find Generals Eaton and Wilkinson either there, or coming there, and if there was no Spanish war, then Blannerhasset was to bear my expenses back.

Question. Then you considered yourself as engaged for a Spanish war?

Answer. I did.

Question. And Mr. Gallatin was to have joined?

Answer. Yes, most particularly; so Mr. Blannerhasset said.

Cross-examined by the accused and his counsel.

Colonel Burr. Do you recollect any specific offer of land which I made to Mr. Blannerhasset in my letter?

Answer. No. I recollect you authorized him to offer a certain quantity to young men.

Question. Do you not recollect I offered him forty thousand acres?

Answer. I do not.

Question. Did I not show you a map of the land?

Answer. You did.

Question. Did I not show you some deeds for the land?

Answer. I do not recollect.

Question. Do you recollect that I stated in my letter the advantages and disadvantages of his coming down; that, if he could not live in peace with his neighbors, he had better come down?

Answer. I recollect something in that way. But the impressions on my mind were that you expected him to come down.

Question. You state that you had offers from Blannerhasset; had you any from me?

Answer. Not from you.

Question. Did I mention anything about a party with Tyler?

Answer. No.

Question. How many guns did you see on the island?

Answer. I saw no more than three.

Question. Did I ever speak of the party on the island as *my people?*

Answer. No. Your expressions were generally *they.*

Mr. Hay. When you arrived at the island, and made your communication to Mr. Blannerhasset, did you immediately retire to bed and not examine particularly? A. Yes.

Chief Justice. What did Mr. Blannerhasset say to you about your finding Generals Eaton and Wilkinson?

A. He said, if I did not find them at the place to which we were to go, and there were no Span-

ish war, he would bear my expenses home again. He said in case there was no Spanish war, they were to settle Washita lands.

Mr. McRae. Do you recollect any others whom he mentioned to you as concerned in the enterprise?

A. He mentioned Mr. Dayton, Mr. Devereux of Baltimore, and Colonel Smith of New York.

Mr. Wirt. Did he say that Colonel Burr was concerned?

A. In our first conversation on the subject, he said he did not know what Colonel Burr meant to do; and, as to his influence, he observed "you know he is not high in the confidence of his country." In all the other conversations he did speak of him as the head of the party.

Mr. McRae. Did you say that you stated to Mr. Blannerhasset the reasons for your declining?

A. I did to his lady, after his departure.

Mr. Wirt. Did I understand you correctly as saying that Colonel Burr said he had no improper design, and that the people were under wrong impressions?

A. Yes.

Q. Were you at the boats?

A. No; I landed some rods above them.

Mr. Carter Berkley, (one of the jurors.) Did you hear Blannerhasset say that the men came down the river to the island by Burr's direction?

A. I did not hear him say one way or another.

Examination of Edmund P. Dana.

THURSDAY, *August* 20.

On the evening of the 10th December I understood that the boats were about to start with Comfort Tyler and his men down the river. Two other young men and myself were determined to cross over from Bellepré where I live. We went down to the landing opposite the island, about dusk; took a skiff, and landed at the upper part of the landing. We then went to the house. Tyler's boats lay below our own about seven or eight rods. I heard some persons talking, but it was dark and I could not distinguish any one. We went into the hall, a large room, where there were a number of men; I remained but a short time and did not count them, but I suppose there were about fifteen or sixteen. One of them was running bullets; and there was nothing but hubbub and confusion about the large fire. I was then introduced into a chamber, where there were Tyler, Blannerhasset, Colonel Smith of New York, and several other gentlemen. I was introduced to Mr. Smith and Dr. McCastle, who had his lady there. Colonel Tyler I had seen the day before.

Mr. Coleman, (a juror.) Is it proper to ask any questions about the conversation which took place with those gentlemen?

Chief Justice. It is left to the consent of the accused.

Mr. Burr. If any of the jury think proper, I can have no objections. The inquiry was not pressed.

When cross-examined, Mr. D. said he was a perfect stranger to the people in the hall, but that on his going in they did not appear to be alarmed.

Edmund P. Dana sworn.

FRIDAY, *September* 25.

I never saw Colonel Burr but once previous to my seeing him in this place.

In November last Mr. and Mrs. Blannerhasset came to my house in Bellepré; his object was to purchase cider. In the course of our conversation, he said he was going down the river, that he had been purchasing land in the West in company with Mr. Burr and others, and that he was going to settle it. This was about the middle of the day, and my father gave them an invitation to stay to dinner. They stayed, and there was a good deal of conversation at dinner on these subjects. Mr. Blannerhasset stated the particular advantages of the Washita land above the rest of the country; that it was near the market, and calculated for the raising of cotton. He said there was a large association for this purpose, and that he wanted young men to go. Those who embarked early, if they succeeded in the undertaking, would no doubt make their fortunes. I observed to my brother, who was sitting with us, that if fortunes were so easily made, he had better go. Mr. Blannerhasset replied, that he wanted such men as we were. He said he did not want to carry us without my father's consent. My father observed that we were our own men, and might act as we thought proper. I think Mr. Blannerhasset bargained for five or six barrels of cider, which he said he was going to carry down the river with him. He invited us to the island, where he would give us more particular information of his designs.

A short time after I was in the orchard gathering apples. Mr. Blannerhasset came to me, to talk more about the enterprise down the river: he asked me if I had any serious intention of going. I said I was unsettled; I would embrace any favorable opportunity to better my situation; and if I knew the object of this enterprise, I could better tell whether I would go or not. I observed that there were some rumors that the plan was unfavorable to the Government, and, if it was, that I would have nothing to do with it. He pledged his most sacred honor to me, and swore on the honor of a gentleman, that the plan was not hostile to the Government; and he went on to name several characters who he said were concerned; that the association was very extensive, spreading from Maine to Georgia. I asked him to name them. He said that Colonel Burr was one, whose talents he then highly commended. I said, if the plan was a lawful one, it was a good one, from the high opinion I had formed of his talents. He said that General Wilkinson was to join with his army. He mentioned General Jackson, of Tennessee, who was then preparing a body of militia, (two or three thousand, I think,) and who was ready to join them. He mentioned General Dayton. I think I asked him if the Swartwouts of New York were not concerned. (There was a gentleman than at our house by that name.) He said they were. He named a number of other characters, whom I do not recollect.

Mr. Hay. Were you on the island on the night of his departure?

A. I was. Mr. Blannerhasset told me if I would come over to see him, he would show me a plan of the Washita country. Some few days after this I went over to the island. Mr. Blannerhassett was at home, but engaged with some gentlemen who were there. He made no further communications to me, seeming to doubt whether I was seriously disposed towards his plans. I stayed only a few minutes. I do not recollect that I have omitted a part of the conversation with him. When he said that Generals Wilkinson and Jackson were going to join with their troops, I asked him what this was for—if for the settlement of lands, they surely were not necessary. He said that there were a great many Indians and Spaniards in that country, who they must go prepared to resist.

I had no further conversation with him till the 9th or 10th of December, when he sent a servant to know whether he could get three or four horses to ride to Marietta. I said that he might have all that I had. About twelve o'clock in the day several gentlemen came—among them were Mr. Blannerhasset, Mr. Tyler, and I think Mr. Smith—there were six gentlemen. I understood they were going up the Muskingum after the boats. Some time in the afternoon they returned. They rode to the landing opposite the island, and sent the horses down. I understood, from flying reports, that they expected opposition, and had returned. Hearing that they were to start that evening, I felt anxious to see their departure, and to find out their object. With two young men I went down to the river, found a skiff at the landing, and passed over. We landed just above where Tyler's boats lay, went to the house, into a large room where a number of men were collected around the fire, and Colonel Tyler among them. I told him that I understood they were about to start down the river. We walked out into the north wing of Mr. Blannerhasset's house together, and there a young man by the name of Bent observed to me that he understood from Mr. Blannerhasset I had some intentions to join.

Mr. Botts objected to this species of testimony. Did Mr. Blannerhasset hear of this conversation afterwards, and approve it? Witness. No.

Mr. Wirt. Who was in company with you? Witness. Mr. Tyler was.

Mr. Hay contended that a declaration made in the presence of one accomplice would bear upon all the rest.

Mr. Botts contended, that if this kind of testimony were admitted, it would be impossible to exclude any source of information or conjecture—newspaper statements or flying reports.

The Chief Justice observed, that, as he was sitting there in the character of an examining magistrate where the rules of evidence were not so inflexibly rigid as in a court of justice, and as Mr. Tyler was probably a party concerned, he was disposed to hear the testimony.

Witness. I replied, that, when I knew the object of the expedition, and liked it, I would then determine; that Mr. Blannerhasset had been telling me a story about settling land, in which I did not place much confidence. Colonel Tyler observed that it was a fact they had made the purchase, but that they had other objects in view. I told him that I had my own opinion on the subject; that I supposed their operations lay towards Mexico. If they were, I felt strongly disposed to be friendly towards them. There was at that time a strong talk about a Spanish war. He observed that I was not much mistaken in my opinion. I told him, that since the subject was first mentioned to me by Mr. Blannerhasset, I had been at some pains to examine the geography of that country; that I found the people there very numerous, and that this handful of men would not be able to make any impression on them. Colonel Tyler observed, that with five hundred well-armed and well-disciplined men, he thought they would be able to effect it. I asked him if they had attended to the different routes through that country? He observed, perfectly; they were acquainted with every cow-path in that country. He said they were not going for plunder or rapine, but to relieve the distressed inhabitants of Mexico, and that they had been invited for five years past. I think I observed then, (although I am not very positive in the expression,) that if that was their object, and they would avow it, they would get three men to join them for one that they got now. I think his answer was, that it was not politic that their military movements should be divulged, or, that their object should be known to any but their leaders; that the Spaniards would get information of it, and fortify themselves.

The conversation closed here. I wished them success in their enterprise, and told them, that if I thought proper to join them, it would be at some point down the river: I was not then ready. Col. Tyler withdrew into the chamber. Mr. Blannerhasset observed, that they were going to start that night; that the Legislature had passed a law which he thought unconstitutional; that he did not apprehend an arrest, but on account of the delay. He said something about his going; that he was sorry, after living so long among us, to be forced to go down in the night, but he was afraid of delay—he was afraid of being stopped; and, the season was so far advanced, the river might freeze up, and he could not go down. About nine o'clock I bid them adieu, and left the island.

Cross-examined.

Mr. Botts. Did Blannerhasset and Tyler speak of a Spanish war as an event that would certainly take place?

Answer. They did. I think Colonel Tyler said there was a strong prospect of war, and, if there was one, he would be there ready to join in it.

Examination of Israel Miller.

FRIDAY, *August* 21.

Mr. Miller stated that he had arrived on the island between the 7th and 10th December last, in company with Colonel Tyler and Israel Smith, with four boats and about thirty-two men, with

five rifles and about three or four pairs of pistols, in all, that he knew of; that he had joined them at Beaver, and gone down with them to Blannerhasset island; and there he saw one blunderbuss and two pairs of pistols. He saw but one man running bullets.

Israel Miller.

MONDAY, *September* 21.

Mr. Hay. Were you at the mouth of Cumberland?

Answer. I was. I went down with Mr. Tyler from Pennsylvania.

Question. Had you any communication with Mr. Burr?

Answer. I was introduced to Mr. Burr by Mr. Tyler at the island opposite to the mouth of Cumberland. I never held any conversation with Mr. Burr.

Question. How many men were there at the mouth of Cumberland?

Answer. On the whole, between sixty and seventy. I am certain there were not one hundred.

Question. What did Mr. Burr say to the party on the island?

Answer. He said he had something to communicate, which he would take another time for.

Mr. McRae. How many boats were at the mouth of Cumberland?

Answer. I believe, ten.

Question. How many men in each boat?

Answer. There were seven in the boat I belonged to; I know not how many were in the others.

Cross-examined.

Mr. Burr. How many men went from Blannerhasset's island?

Answer. About thirty-one men.

Q. Were these men used to labor—to farming, or mechanics?

A. Most of them were fit for it. There were only a few of them not used to labor.

Q. Did they not do hard work?

A. They did.

Q. What arms did they bring from Blannerhasset's island?

A. I saw only one blunderbuss, one fusee, and a pair of pistols.

Q. How much powder?

A. I saw only a small keg.

Q. How many pounds do you suppose it contained?

A. About ten or fifteen.

Q. Were they not short of powder to kill game? Did they not very often come into your boat and borrow some?

A. They did.

Q. What kind of game?

A. Ducks and turkeys.

Mr. McRea. Do they kill this kind of game with bullets?

A. Yes.

Mr. Burr. If the gentleman had ever been in Kentucky, he would have known that it was considered inglorious there to kill a squirrel, or even ducks, with anything but bullets.

James McDowell.

FRIDAY, *September* 18.

Mr. Hay. Did you go as low as the Chickasaw Bluffs?

Answer. I did.

Q. What number of men were assembled at the mouth of the Cumberland river?

A. About one hundred.

Q. How many additional men joined them there?

A. I do not recollect.

Q. Did you see any boxes of arms?

A. No.

Q. Did you see any guns with bayonets?

A. I saw a few.

Q. Any pistols?

A. Six or eight pairs, and some rifles.

Q. Do you know of any men who joined them at Fort Massac?

Mr. Burr objected to this question. Fort Massac was in the Indiana Territory.

Mr. Hay. Did you see any powder?

A. Yes.

Q. What quantity?

A. A couple of small casks.

Q. Did you see any bullets, and what quantity?

A. I helped to run some myself, and saw one barrel about two-thirds full. I saw those bullets below Bayou Pierre.

Q. Did you see Blannerhasset and Smith?

A. Yes.

Q. Did this party seem to be under Burr's command?

A. They said they were Colonel Burr's boats and party. They regarded themselves as under his direction.

Q. Were there any other officers apparently under his command?

A. Yes. Colonel Tyler was an officer, and Mr. Blannerhasset seemed to be one; but not to have so much command as Colonel Tyler.

Mr. Wirt. Did you see any agricultural tools, such as ploughs and hoes, adapted to the settlement of lands?

A. Not any.

Q. Were there any families; that is, any men with their wives?

A. There were two families.

Q. Of what description of character was this party composed?

A. Principally of young men.

Q. Did they appear to be men accustomed to plantation labor?

A. Some of them appeared fit; but most of them seemed like gentlemen.

Mr. Hay presumed that it would not be departing from the opinion of the court if he asked a question concerning some transactions out of the United States which might serve to elucidate the state of the party at the mouth of Cumberland. Might he not, for instance, inquire whether the witness had seen any boxes of arms at Bayou Pierre? because it was perfectly fair to infer that, if they had not been subsequently received, they must have been with the party at the mouth of Cumberland river.

Mr. Burr. No precise inference can be drawn from that circumstance, because these arms may have been received into the boats below the line of Tennessee.

The Chief Justice thought it a proper question: if the acts attempted to be proved were done in the United States, evidence might be drawn from any place to prove them. But no evidence could be produced to prove an act that was not done in the United States.

Mr. Baker. This is really a strange mode of inferring circumstances by contrast. The witness says expressly that they were not at the mouth of Cumberland, and yet he is interrogated whether he did not see them at Bayou Pierre.

Mr. McDowell. I did not say that they were not at the mouth of Cumberland; I said only that I did not see them there.

Mr. Hay. Was there any fact to induce you to believe that there were chests of arms on board?

A. I did not see them; but they took in some boxes at Blannerhasset's island.

Q. Did they take in any boxes between the mouth of Cumberland and Bayou Pierre?

A. None.

Mr. Wirt. You say there were about one hundred men at the mouth of Cumberland river. Was there any accession to this party afterward?

A. It was increased before we got to Cole's creek.

Q. What was the total amount of the party?

A. There were about one hundred and thirty at Cole's creek.

Q. Was there any application to you to join them?

A. Mr. Blannerhasset applied to me.

Q. In what manner?

A. He asked me to go along with him; but I said I did not wish to go without knowing where they were going. He was at me two or three times. He said that many men were going without knowing any more than I did. I told him I had very little in the world, but that I did not wish to leave it in that way.

Mr. Burr here interrupted the examination. He observed that the counsel for the prosecution were bound to prove the overt act first; that there was no impropriety in producing circumstances explanatory of the overt act; but how could these conversations between other persons, and held in his absence, contribute to establish this act; or how could they affect him?

Mr. Hay contended that these circumstances might contribute to show the intentions of the party and the character of the enterprise.

The Chief Justice considered this as admissible testimony. If the counsel for the prosecution charge a military assemblage at the mouth of Cumberland, they were at liberty to produce every circumstance explanatory of the nature of the assemblage. He considered conversations among the men themselves at the mouth of Cumberland as admissible, because they contributed to show the nature of the expedition; and why should not conversations that were afterward held be as explanatory as those which were there maintained? The charge, too, was not confined to the mouth of that river, but was extended to any place below that which was in the limits of the United States. It is, then, immaterial where these conversations passed, because they make a part of the transactions at the places actually charged.

Mr. Botts objected that these conversations were not held within the United States, because the jurisdiction of the Mississippi had never extended beyond the margin of the Mississippi. Some conversation here ensued, when Mr. McDowell was dismissed, and William Love (the quondam groom of Blannerhasset) was called into court.

James McDowell, again called in.

MONDAY, *September* 21.

Mr. Hay. How far did your evidence go on your former examination?

Mr. Wirt. The court stopped him within the limits of the United States.

Mr. Hay. Do you recollect anything that passed after you left the mouth of Cumberland?

The witness replied to successive interrogatories, that he saw eight or ten arms in the boat which he sat out in, the boat of Captain Tyler and Major Smith; that he saw guns, but not so many, in the other boats; that Colonel Tyler was the captain of that boat; that he thought there were about one hundred and thirty men at Cole's creek; that at a little bayou below Bayou Pierre, the boats stopped and Colonel Burr got out; he knew nothing of clearing ground for exercising the men; he did not see the boxes opened; that some of the boxes were four feet long and some six; that they were heavy, and he could not lift them; he saw six or seven boxes; that a few miles below Cole's creek, they went up on a hill, and formed a circle; Colonel Burr told them he was a thorn in their side, so long as he remained with them; that he had been taken from them two or three times; he had been carried on his trial to Washington; and that he was now about to leave them; he told them what was his was theirs, (alluding, as the witness supposes, to his property;) and that they might go on and settle the Washita country which he had purchased.

Cross-examined.

Mr. Burr. Did you see General Wilkinson at New Orleans?

A. I do not know whether I saw him.

Q. Who invited you to come here?

A. I was summoned in Pennsylvania.

Mr. Blannerhasset. Do you recollect being in Dean's boat?

A. I do.

Q. Do you not recollect that its roof was leaky? A. I do.

Q. Do you not recollect that I expressed some fears lest the leaks should injure my boxes?

A. I do not recollect.

Examination of Jacob Dunbaugh.

SATURDAY, *September* 19.

Mr. Hay. Will you describe the situation of the party at the mouth of the Cumberland river?

Witness. Am I to be confined to the Cumberland river?

Mr. Hay. You may go down to the Chickasaw Bluffs.

Mr. Botts. Go down to the Mississippi river, and whether you are to go further the court will instruct you.

Some desultory conversation here ensued on this point, after which the witness proceeded.

On the 26th December, 1806, very early in the morning, a small skiff, with four men and a Mr. Hopkins, arrived at Fort Massac. Some time after the arrival of this skiff, Captain Bissel, (commanding at the fort,) detailed me for command to go to the mouth of Cumberland river to purchase a beef for him.

Q. What were you?

A. I was, and am still, sergeant in the Army of the United States. He told me I was to call on Colonel Burr with his compliments; and if Col. Burr wanted my assistance, that I was to furnish it. Captain Bissel told me this Mr. Hopkins, who came in the skiff with four men, was going up with me. When we got half way up the Cumberland river, we stopped, and I asked Mr. Hopkins his business at Fort Massac, and he said it was to ask Captain Bissel whether he would oppose Colonel Burr's passing by the fort? I got to the mouth of Cumberland, about half an hour before sunset on the 26th December, and landed; Colonel Burr was then encamped on Cumberland island. After I had crossed over to the island, I saw Colonel Burr, and delivered Captain Bissel's message. Colonel Burr said he was much obliged to him, and that Captain Bissel was very good; Colonel Burr asked me, "is not this my old friend?" I had seen him before. He said he believed I drank no brandy, and asked me if I would not have a glass of wine? When I drank I said, "here's success to Colonel Burr and his undertaking;" and Mr. Blannerhasset (this was the first time I ever saw him) stamped his foot and said "Amen." Colonel Burr told me I must take breakfast with him next morning; I replied that I would. On the 27th, I saw Colonel Burr, and told him I was going to the garrison. He told me to bear his compliments to Capt. Bissel, and asked me if I could take a barrel of apples to him; I told him I would. While they were getting the apples on board, the wind sprung up very fresh, and I was not able to start. In the course of that day I crossed him several times over to the Kentucky shore, and several of his men. During that day, Colonel Burr asked me how I would like to go down the river with him? I replied very well, if I could obtain the consent of my General; he said that would make no odds; he would fix it without. This was on the 27th, and on the 28th I called on Colonel Burr, and told him I was going to Fort Massac; he sent his compliments to Captain Bissel, but said he expected he would get there before me; I told him that he might man his barge as well as he could, I would arrive there before him. I arrived in the garrison some time in the afternoon.

Mr. Botts. There you may stop. It is impossible to progress without running into some impropriety, unless we ascertain the limits within which the witnesses are to be confined.

Mr. Hay observed that he did not mean to prove any acts at Fort Massac.

After some conversation, the examination proceeded.

Mr. Hay. Did you see any military parade?

A. I saw the men drawn up at the mouth of the Cumberland.

Q. How many men?

A. I did not count them; but I suppose there were about one hundred.

Q. What kind of men?

A. Generally, young men.

Mr. Wirt. Did they look like hard laborers?

A. The principal part did not.

Q. How drawn up? Were they drawn up in a line?

A. No; they were drawn up in three wings.

Q. What do you mean by three wings?—divisions?

A. [The witness here described their position, by drawing a figure on the floor with his foot.] They described three sides of a square; Colonel Burr was introduced by Colonel Tyler, beginning at the left; the party gradually fell in, and formed a circle.

Mr. Hay. How introduced?

A. He went round and shook hands with every man.

Mr. Hay. Did you not see some chests of arms?

Mr. Burr objected to this manner of putting the question.

Mr. Hay admitted he had put the question inadvertently; he merely wished Mr. Dunbaugh to state what he knows of the chests of arms.

Mr. Botts. State what you know of any chests of arms within the United States.

Witness. I did not see more than a few rifles at the mouth of Cumberland.

Mr. Hay. I think the court yesterday decided that we were at liberty to state any circumstances out of the United States, which were explanatory of the acts done within the United States.

On this topic a long and desultory discussion ensued. The Chief Justice at length decided, that if an overt act be laid at the mouth of the Cumberland river, if a military assemblage was said to be *there* assembled, that evidence beyond the limits of the States might be produced to show the military attitude of the party; that, with respect to this particular question, if the witnesses could show that no other arms were put on board, and if certain arms were put on board at a certain place, it was some presumption that these arms had been at the mouth of Cumberland river; and that he understood it was the intention of the prosecution to show that this party were in such a state at such a place, that they might be able to infer that the party were in a similar state at the mouth of Cumberland. In this point of view he conceived that such evidence was admissible.

Mr. Hay. State, then, Mr. Dunbaugh, what you know on this subject. Did you leave Fort Massac with Colonel Burr?

A. I overtook him at New Madrid on the first of January.

Q. Did you then go down the river with him?

A. Yes; in his own boat.

Mr. Wickham repeated his objections to this kind of evidence. How was the witness to know whether arms might not have been subsequently put on board the boats? He was not always in Colonel Burr's boat, nor was Colonel Burr's boat with the rest. Can this be good testimony?

Chief Justice. The attorney is to show that hereafter; he is to show that there was no connexion between the boats and the shore.

Mr. Wickham. But suppose he has no testimony to that effect?

Chief Justice. Whether arms were subsequently introduced is a mere matter of inference, dependent on the whole of the evidence on both sides. It depends on a variety of circumstances, such as the situation of the shore and the country, &c.

Mr. Hay. State, then, Mr. Dunbaugh, what you know about the arms on board the boats.

Witness. Some time in January we left Bayou Pierre, and descended to Petit Gulph, three miles below, on the opposite side; Colonel Burr went ashore, and returned to the Petit Gulph; the boats all shoved off at once; Colonel Burr's was rather behind. The night we left Petit Gulph, Colonel Burr, and Wylie went into the bow of the boat for an axe, auger, and saw; they went into Colonel Burr's private room and began to chop; he ordered no person to go out, but I did go out; I saw a skiff lying aside of Colonel Burr's boat. After they had done chopping, a Mr. Pryor and a Mr. Tooly got out of the window; I got on the top of the boat, and saw two bundles of arms tied up with cords, and sunk by cords going through holes at the gunwales of Colonel Burr's boat; I observed to Mr. Pryor that he must be careful to bring up the boat, or else it could not get close to shore.

Mr. Hay. How many arms were there?

A. There were about forty or forty-three stands I saw, besides pistols, swords, blunderbusses, fusees, and tomahawks

Mr. Wirt. Is not the coast opposite to New Madrid a part of Tennessee?

A. No; It is the Indiana Territory.

Q. Were you on board any of the other boats?

A. Several.

Q. Did they keep together?

A. They did when they could.

Q. Did you see arms in the other boats?

A. I saw several stands of arms, that is, muskets with bayonets, in Floyd's boat, and about twelve rifles.

Q. Were you near enough to Colonel Burr, at the mouth of Cumberland, to hear his observations to his party?

A. I was; he said there were too many bystanders to divulge his plans.

Q. Were any men obtained, after you joined them?

A. One, who got aboard at New Madrid.

Q. Were you commissioned by Colonel Burr to obtain men?

A. No; not citizens.

Q. What do you mean by the word "citizens?"

Here Dunbaugh was stopped by the opposite counsel, and his examination proceeded no further on this day.

Conclusion of Jacob Dunbaugh's evidence.

MONDAY, *September* 21.

Mr. Hay. State what passed between Colonel Burr and yourself, about your getting people to join him?

Witness. I stopped before with saying that Colonel Burr had not spoken to me to engage citizens, but he had spoken to me about soldiers. On the 30th of December, after Colonel Burr had obtained Captain Bissel's consent for me to go with him, I went to Colonel Burr, where he was encamped, about a mile or two below the garrison at Fort Massac, on the Indiana side; Colonel Burr asked me into his cabin, (a private room he had,) and asked me if I could get ten or twelve of the best men in the garrison to go along with him; I asked him how it was to be done; he said, "get them to desert;" I told him no; he asked me if I could not steal out of the garrison arms, such as muskets, fusees, and rifles; I told him that I would not, if I could, for him or any other man on earth; that I had always been well treated by the officers of the army; I told him that I had a rifle of my own, and he told me to bring it with me, and he would pay me for it. I started then to the garrison and prepared myself to go; that was, after Colonel Burr had obtained liberty of my captain.

The counsel for the accused contended that this kind of testimony was not at all relevant, to the subject. After some discussion, the examination proceeded.

Witness. At the mouth of Cumberland, Walter Davidson engaged a man by the name of Casey.

Q. On what terms? Witness. I do not particularly recollect.

Q. How do you know that Davidson was the agent of Colonel Burr?

Witness. He belonged to the party, and told me he was agent for Colonel Burr.

The substance of the engagement was, he was to receive $12 50 per month for six months, clothes and victuals for six months, and one hundred acres of land, to fight against all opponents. This Mr. Davidson, Plumb, and Andrew Wood, were sent to New Madrid to enlist more men.

[The witness here returned to that point in his narration at which he had been interrupted on his former examination.]

When I returned to Fort Massac, on the 28th December, I gave Colonel Burr's compliments to Captain Bissel, and told him that Colonel Burr had sent him a barrel of apples. The next day (29th) this Mr. Davidson, Plumb, and Andrew Wood, came to the garrison very early in the morning, in a skiff; this was the time when they told me they were going to enlist more men for Colonel Burr. They bought a skiff of me, that was left with me to sell by a Mr. Cutler, a surveyor; their own skiff was afterwards carried off by Colonel Burr's party. That evening, after sundown, a barge

came down to Fort Massac with twelve men in it; Colonel Tyler and Major Hill were in it, and I think also Major Smith. They went up to Captain Bissel's quarters, where they stayed about twenty minutes, and I then heard Colonel Tyler tell the boat's crew to return to where Col. Burr was encamped, with some other instructions that I did not hear. Between twelve and one o'clock that night Colonel Burr's boats passed by the fort, and landed about one or two miles below the garrison. [*Mr. Hay.* How many men were then in the garrison? A. forty-four men. Q. Was that the usual complement of men? A. No; some of the troops had gone to Newport, and some to other places. Q. Was there any artillery? A. None. Q. How wide is the river at that place? A. about a mile wide.] Next morning Captain Bissel told me to get six men, with the Clinker boat, to take him down the river a small piece. While the men were getting ready, a Mr. Fort, (perhaps his christian name was John) who had been lying there several days, asked me how I would like to go along. I told him I should like it very well, if I could get leave to go. He told me he had been speaking to Captain Bissel the evening before, and that Captain Bissel had consented to let me go. While the boat was getting ready, Captain Bissel, Colonel Tyler, Major Hill, and I believe Major Smith, came down. Captain Bissel got in his own boat, the rest pushed off in the boat that had been lying there several days, and fell down in company with him to where Colonel Burr was encamped. Captain Bissel went into Colonel Burr's boat, and, while there, Colonel Burr asked him to let me go with him. I heard it, because though I was not in the same room, there was a thin partition between us, and I heard him ask Captain Bissel: I did not hear Captain Bissel's answer. Captain Bissel came out, got into his own boat, and, after going one or two hundred yards, we landed and walked up to the garrison. On 30th December, while I was in the military store, a man came in, who brought two letters from Colonel Burr; he gave Captain Bissel one, and the other to me. Captain Bissel went out, and after I had done in the store he called me, took me through the sally port to the back of the garrison, and asked me whether Col. Burr had been speaking to me about the furlough. I told him no. He asked me whether I wanted a furlough to go. I told him, with his approbation and advice, I would take one. Captain Bissel said he would not advise me, but if I wanted one for twenty days, he would give me one. He told me before the twenty days were out I should see the General. He asked me if Col. Burr had told me any secrets, if he had, that I must keep them to myself. I accepted of Capt. Bissel's offer, and he told me to get ready to go with Col. Burr. I then went and saw Col. Burr, and the conversation passed about the men and arms, which I have already related. That evening (on 30th Dec.) Capt. Bissel sent for me to his quarters, and told me he was going to advise me what I was to do; he advised me never to forsake Col. Burr; that he would do something for me; he told me that if ever Col. Burr got on a field of battle never to leave him on the ground: at the same time he made me a present of a silver breastplate. That evening I went to Captain Bissel's for my furlough; he gave me a furlough, with a letter to General Wilkinson, to be delivered by Col. Burr. Col. Burr had then started, and I was to give him the letter as soon as I overtook him. On the 31st December, being the day for muster and inspection, I asked Capt. Bissel if I was to show my clothing; I said they were all packed up and on board. He told me I must borrow some for inspection; which I accordingly did, agreeably to his orders. While the men were on parade, I went to his lady's quarters to take my leave, and, on my return, Capt. Bissel having brought the men to a ground, he told me, "Dunbaugh, I wish you success, let you go where you will." I wanted to see Dr. Tuttle before I went, and Capt. Bissel told me if I had no particular business I had better go on, and if any one asked me where I was going, I was to say I was only going a few miles down the river, and that I was coming back again. There was one of Col. Burr's boats with eight hands to take me to him.

We overtook Colonel Burr, on the 1st January, at New Madrid. I handed him the letter for General Wilkinson, and he broke it open. I told him the letter was for General Wilkinson. He asked pardon, took me into his cabin, and sealed it up. I asked him what boat I was to go in, and he said, in his own, as its accommodations were better than in any other. We left New Madrid about 11 or 12 o'clock that day, (the 1st January.) Andrew Wood remained at New Madrid, and Plumb and Walter Davidson, who had been sent on to enlist men, got on board the boats, and Mr. Hopkins was left in their places to enlist. After we got into the stream, a keelboat came alongside, and took Colonel Burr into another boat some hundred yards off. I saw him on the bow of that boat, giving some instructions, but I could not hear him. Major Floyd had charge of this keelboat and crew, and I understood they were instructed to be at Natchez in four days. When we got within forty-five miles of the Chickasaw Bluffs, Colonel Burr asked me if I would go ahead with him to Chickasaw Bluffs, in a small boat, as I was acquainted with the river. I told him I would. We got into a small boat with twelve more men, and he gave general orders to the other boats to follow on, so as to reach the Bluffs early next morning. We got there between 12 and 1 o'clock that night, (the 3d January.) After we landed, Colonel Burr told me I must go up to the garrison, and ask the commanding officer if he could not get quarters that night for himself and men. When I arrived at the garrison, I was conducted to Lieutenant Jackson's quarters; he returned his compliments, and said he would furnish them with lodgings. Col. Burr went up with some of his men and supped. The next morning, Colonel Burr asked me if I was acquainted with the men in the garrison. I told him I was. He asked me if I could not get ten or twelve of the best men to desert. I told

him I would not. He then said he would speak to them himself, and get two of the best men, and asked me to name them, which I did. [Upon being interrogated, the witness said there were nineteen men in the fort, few pieces of cannon, and the river about as wide as at Fort Massac.] Some time in the afternoon, I asked Colonel Burr if he had got the men to go with him. He said he had. Some time that evening, he told me that Lieutenant Jackson and the other men would follow in a few days. That day Colonel Burr employed a man (one Skinner) to run him some musket-balls. He run him six hundred, for which Colonel Burr paid him one dollar. He bought three dozen tomahawks out of the factory, which Colonel Burr distributed among his men—some he had helved. That day all the boats landed at the Bluff, and on the 15th they all started, except a small boat left for Colonel Burr. He soon overtook us, and got into his own boat. No one came from the garrison with him. We proceeded to a place called Palmyra, thirty-five miles above Bayou Pierre, on the 10th January. Colonel Burr again asked me if I would go down to Bayou Pierre with him.

Mr. Wickham asked the court whether the witness should proceed? How was this kind of testimony calculated to prove the overt act? How was it relevant to the charge? Was it not better for gentlemen to extract whatever they deemed material out of the witness by putting interrogatories?

Mr. Wirt. The witness was just coming to certain declarations of the accused, which directly related to the objects of this expedition; when he has arrived at Bayou Pierre, and is about to tell something that is important, he is stopped.

Chief Justice wished the attorney to put interrogatories.

Mr. Hay. Did you ever get out of Colonel Burr's boat to go into another?

A. Never, except at Chickasaw Bluffs and Bayou Pierre, when I went with Colonel Burr, at his particular request?

Q. Did you go ashore at Judge Bruin's? and state what happened there.

The counsel for the accused objected to this general interrogatory.

Chief Justice. Ask him whether anything happened there respecting this expedition?

Mr. Hay. Perhaps the witness may omit facts, because he deems them unimportant, which I may consider extremely relevant. Did anything happen at Judge Bruin's respecting a publication? and state what it was.

Witness. On Sunday, the 11th January, while we were three or four hundred yards from the shore, Colonel Burr told me to arm myself with a rifle, and conceal a bayonet under my clothes; he told me he was going to tell me something I must never relate again; he then told me that General Wilkinson had betrayed him; that he had played the devil with him, and had proved the greatest traitor on the earth. I told him I could not believe it, and asked him how he knew it; he said he had seen published in a paper a letter, which he had some time before written to General Wilkinson in ciphers; he mentioned that General Wilkinson had made oath to this letter before the court, or in open court, I do not recollect which; he then told me he was fearful of being injured or taken; that I must keep a good look out about Judge Bruin's. Colonel Burr went into Judge Bruin's to breakfast, and I went into the cotton gin that was near the house; a boat came, and he told me to take a spy-glass and see whether it was his boat; I could not determine; he then directed me to go down, and, if it was his boat, to fire a musket.

Q. Where is Judge Bruin's?

A. About a mile and a quarter below Bayou Pierre.

Mr. Wirt. Where did he say he had seen the paper?

A. The paper had been handed by Judge Bruin to Colonel Burr the evening before.

Q. What was the conversation at Judge Bruin's?

A. Colonel Burr asked him if he had any papers; he handed him this paper, and, after reading it fifteen or twenty minutes, he rose up, and said he must go to the boats.

Mr. Hay. Did the troops from the boats land there?

A. Yes.

Q. With what view did the men go ashore below the mouth of Bayou Pierre?

A. They landed about two or three miles below, in the Louisiana Territory.

The opposite counsel objected to these questions, but were overruled by the court.

Mr. Hay. State what happened at the landing of the men.

Witness. Some days after the men landed, (they all landed,) Colonel Burr ordered ground to be cleared for a parade ground, for the purpose of exercising the men; I never saw the ground myself, nor the men exercising. Some of the men, however, are here; Dr. Menhollland is one of those men who assisted in clearing off the ground. There was a guard of twelve men paraded at this place; Wyllie, for one, had a rifle and sword.

Mr. Wirt. Were there any Indians at that place?

A. None.

Q. What produced this guard?

A. They understood that the militia were coming to take Colonel Burr, and these twelve men were placed to alarm the boats.

Q. Was this before or after sinking the muskets?

A. It was before.

The witness, upon being further interrogated, deposed: That a Mr. Lemaster had taken out of a hogshead, then in Mr. Blannerhasset's boat, a barrel of potatoes, with which he said he was going to fill the box of arms, so as to make it appear like a box of potatoes; that he was asked, in the presence of Colonel Burr, to go and help to clear the ground; that Colonel Fitzpatrick came to take an inventory of all the goods and arms that he could see; but that he did not see Colonel Fitzpatrick search for the arms.

Mr. Burr. Where was I all this time.

A. I know not, but I saw you handing two or three muskets out of the cabin window of your own boat into Mr. Blannerhasset's boat. The witness further stated that the arms which were sunk were sunk between Petit Gulph and Cole's Creek; that Colonel Burr was looked upon as the commander-in-chief of the expedition; that, in the night, his boat was distinguished by two lanterns, placed one above another, whereas the rest had but one; and that in the day time, handkerchiefs were hoisted in some of the boats, by way of flag.

Cross-examined.

Mr. Burr. You say your furlough was for twenty days?

A. It was.

Q. After the expiration of this furlough, were you not advertised as a deserter?

A. I was.

Q. Were you taken up.

A. I was not.

Q. When you got to Baton Rouge, did you write to General Wilkinson?

A. I did.

Q. What did you write?

A. That my furlough had been taken from me; and that, if he would send me a furlough or a pardon, I would come on in three days.

Q. Did you promise to give any information against me?

A. I did not.

Mr. Wirt observed that he was authorized by General Wilkinson to say that he had the original furlough given by Captain Bissel.

Mr. Martin. Did he send you a pardon?

A. General Wilkinson wrote to me to come down.

Q. Have you that letter?

A. No; it was taken from me at Baton Rouge; Governor Folk has it at this moment.

Q. Did you write to Captain Bissel?

A. I did; I mentioned to Captain Bissel that, as both of us might be injured by this transaction, if he would say that he had sent me as a spy, it would clear both him and myself.

Q. When were you discharged from the army?

A. I was not discharged in 1805, when I travelled with you.

Q. Why were you discharged? Show your hand to the court.

A. There is my hand, (one of the fingers appeared to have been injured;) I can show my discharge; I procured a substitute, and many have liberty to procure them.

Mr. Hay. Hand me the discharge. [The witness accordingly presented it.*]

Mr. Burr. Did you come round with General Wilkinson?

A. I did.

Q. Were you subpœnaed?

A. I did not know I was.

Q. Who requested you to come round from New Orleans?

A. I came by request of General Wilkinson.

Q. Did he say for what?

A. He said as a witness.

Q. You gave a deposition in New Orleans?

A. Yes.

Q. At whose request?

A. At General Wilkinson's.

Q. When I came down the Mississippi in 1805, by whose orders did I have the men?

A. I thought by General Wilkinson's.

Q. Had they arms?

A. I think not.

Q. Had they colors?

A. They had, and they were flying every day.

Q. Did you not tell me you expected your discharge?

A. Yes.

Q. Do you not know that the soldiers at Chickasaw Bluffs wanted to go with me, and I refused them?

A. I recollect that you wanted me to get them to go, but I refused.

Q. Did you not tell me that some of them wanted to go?

A. I mentioned one or two.

Q. Did any go?

A. No.

Q. Why?

A. You told me that the lieutenant and all would follow in a few days.

Mr. Wirt. This previous voyage you took the year before. Were they not troops of the United States?

A. They were.

Q. These soldiers; were they going where their company was?

A. The whole company were going to New Orleans; and this barge, with ten men, was sent on ahead.

Q. And this flag belonged to them?

A. It did.

Mr. Wickham. Were they regimental colors?

A. They were colors made for the barge.

Chief Justice. Did you tell Captain Bissel that Colonel Burr had applied to you to get the men to desert?

A. I did not.

Mr. Wirt. Did you not reject the proposition?

A. I did.

At the request of the Chief Justice, the witness here described the particular manner in which the arms were sunk. He said that they were so deep in the water as to prevent the boat from going within fifty yards of the shore. He also related his visit to Judge Bruin's, where Colonel Burr got the newspaper. He also stated, at the request of the court, the contents of his letter to General Wilkinson; that if he would send him the furlough, which Lieutenant Rodney had taken from him, or a pardon, he would be there in three days. General Wilkinson informed him that he had behaved very wrong in leaving the man he was going down with; but if he would come down, he should not be molested.

*The discharge states that, "having served three years and six months, and being permitted to procure a substitute in his place, J. D. is hereby discharged."

Mr. Wirt. Where did the party break up?

A. A few miles below Cole's creek.

Q. How far is Cole's creek from Bayou Pierre?

A. About twenty-five miles.

Q. When was it that this parting speech was made at Cole's creek?

A. About the 6th or 7th of February.

TUESDAY, *September* 22.

Jacob Dunbaugh was re-examined. He stated there were two keels and four batteaux; that Mr. Burr had told him, between Chickasaw Bluffs and Bayou Pierre, that his first object was to seize Baton Rouge, and make that his home until he could collect his forces, which he expected would amount to 10 or 12,000; he stated that Mr. Blannerhasset told him that Governor Folk, of Baton Rouge, would order the men to take the flints out of their guns; he said that some of the men went up the Red River.

Upon being cross-examined, he stated that he had made a deposition at New Orleans at the request, but not compulsion, of General Wilkinson; that he was well acquainted with the construction of batteaux; that they could go up the stream, and that they were built for that purpose.

Evidence of Stephen S. Welch.

MONDAY, *September* 21.

Q. Were you at the mouth of Cumberland?

A. I was. I only joined there. I was there with a load, and Captain Berry wished me to join and go down the river to make a settlement, for that it was advantageous to young men. I said that I had no incumbrance; and, being a single man, I was willing to go.

Q. Who is Berry?

A. John Berry, a man I met there.

Mr. Burr. He was called captain of the boat.

Witness. He was appointed captain of the boat I went in. I agreed to go down. The proposition made to me by Captain Berry was to settle the Washita country; to have a certain portion of land, besides other compensation.

Q. What was it?

A. Captain Berry offered me ten dollars a month; but I said I was not for hire, and, as I was a young man, would go as a volunteer.

Q. Did you descend the river with them?

A. Yes.

Q. Do you recollect hearing any conversation from Mr. Burr to Mr. Floyd, on the subject of arms?

A. I do not.

Q. Did you go to Bayou Pierre?

A. I did, and also to Natchez.

Q. What became of Mr. Blannerhasset?

A. I think he went down to Natchez with us. I think that the boat with his family aboard was struck on the point of an island above Natchez, and that I assisted to get her off. I did not see Mr. Blannerhasset there, but I was told that he went to Natchez.

On being further interrogated, the witness deposed that he was on the piece of ground cleared for exercising; that he was stationed there with sixteen or seventeen others as a guard to watch the boats, about 200 yards from it; that the boats were then on the west side of the Mississippi; that he understood, as the reason of this arrangement, that militia were expected to come and carry the boats to Cole's creek; that the orders of the guard were to let no one pass to the boats without giving the countersign "look sharp;" and to fire if any one attempted to pass, not with an intention of hitting them, but as an alarm to the boats; that a Mr. Noland from Berry's boat gave the orders, but he knew not who gave them to him; Noland was sometimes styled lieutenant, and sometimes ensign; that sentinels were placed out, who were relieved every two hours through the night, till daylight; the guard were not.

Q. Were you ever better informed about the object of this expedition? The witness said he had not been from those who had any authority, or who he supposed were better informed than himself; but there was a talk among the men that they were going to take Baton Rouge.

Q. Why did your impressions change?

A. The witness said, that he did not know who was the first person that started such a conversation, but that *he* had first heard it from two or three, or more, who were talking in the bow of the boat; that he came forward and heard it; that it was further said that they were going to drag the men to Florida. Some of them were very much scared at the time. He further said, that there were somewhere about one hundred men at the mouth of Cumberland; that they had no agricultural tools, no ploughs, hoes, or harrows, except edged tools, to fell timber; that the search made by Captain Fitzpatrick was at the bayou below bayou Pierre; that, being only in one boat when it was searched, he does not know whether the search was a fair one; that he never saw, but did hear, that arms had been sunk and concealed; that he saw, not heard, of the stopping a leak produced by two auger holes and ropes in the back part of the gunwale, in the cabin occupied by Mr. Burr; for that Mr. Pryor being unable to stop the leak, he had called him, and he had stopped it.

Cross-examined.

Mr. Burr. Did you know Dean's boat?

A. It sailed with us in company from the mouth of Cumberland: but I do not certainly know whether it was connected with us.

Q. What became of Boyce's boat?

A. It went down to Natchez.

Mr. Wirt. Who dismissed you from this party?

A. When the boats were stopped, and the eruption took place, I went down to Natchez.

Mr. Wirt. When Colonel Burr left the party, was there any ceremony of parting? any speech?

A. He did speak to them. He said he would have to leave them until he could see them again. I think he said his property was to be distributed among them.

Q. Was anything said about wages; about the means of paying them?

A. I do not recollect.

Mr. Burr. How did you come round from New Orleans?

A. I came with General Wilkinson.

Q. Were you subpœnaed?

A. I was.

Q. Had you any communication with General Wilkinson?

A. Not until after I had received the subpœna.

Q. Did you receive any money there? any from General Wilkinson?

A. Yes. I received ten dollars from General Wilkinson, to help me to bear my expenses as a witness.

Q. Did you give any deposition there?

A. None but some statement of my evidence taken down by General Wilkinson; but I did not give my qualification to it.

Samuel Moxley.

MONDAY, *September* 21.

Mr. Wirt. Were you with this party?

Answer. I was.

Q. Where did you join them?

A. At the falls of Ohio.

Q. Were you at the mouth of Cumberland?

A. I was.

Q. In whose boat did you descend the river?

A. In Captain Berry's boat, which was built at the falls of the Ohio, and there joined the party. Major Floyd's boat also joined them there, besides a small batteau, which was not loaded with provisions, as the other two were.

Q. Did you not proceed down the river with the boats which came from Blannerhasset's island?

A. Yes; we were sometimes in company with them.

Q. How many men were at the mouth of Cumberland?

A. I suppose not more than one hundred.

Q. Did you see these men introduced to Colonel Burr?

A. I did not.

Q. Nor heard his speech?

A. I heard nothing about it until I got to New Orleans.

Q. Did you conceive that you belonged to this party?

A. I did.

Q. With whom did you make an engagement?

A. With Mr. Berry, of Indiana, twelve miles from Jeffersonville.

Q. What was the nature of that engagement?

A. To descend the Ohio and Mississippi, and to ascend the Red river, to settle the Washita lands. I was not certain whether these lands belonged to Colonel Burr or Mr. Lynch; but I supposed the latter. It was also stated that, should our frontiers be invaded by the Spaniards, we were to render every assistance in our power to resist them.

Q. How many arms were in your boat?

A. About eight or nine.

Q. How many men?

A. About sixteen.

Q. Were you at the bayou below Bayou Pierre?

A. I was.

Q. Did anything of consequence occur there?

A. I do not know what you may deem important.

Q. Were there any guards stationed there?

A. There were; and for this purpose the militia were said to be crossing the river above us in rafts, and the guards were to give the alarm.

Q. Was any ground cleared to exercise men?

A. There was ground cleared, but I do not know for what purpose.

Q. How large a slip?

A. About half an acre.

Q. To what purpose was it applied?

A. I know not; but the guard were stationed there.

Q. Was it that the guard might stay there?

A. I know not; but when it was cleared, I did not see the necessity of clearing it.

Q. What instructions were given to the guard?

A. I heard only from others, that, if any one approached, they were to fire two guns; and then the guard were to go off in a small boat.

Q. Do you think the object of this enterprise was to settle lands?

Mr. Burr objected to such inquiries. How could the mere opinions of a witness have any influence in a court of justice? Might not those opinions be formed from idle rumors? Gentlemen have substantially asserted that four-fifths of the people of this State have been duped by such false rumors. The same means of deception were used in Kentucky; but they were not so easily duped as the gentleman represents the Virginians to have been.

Chief Justice. Let the question be proposed in this form: Did you see anything in the party itself which induced you to think there was a different object?

A. I did not, before the arrival of the militia, when I began to entertain doubts of the object.

Mr. Wirt. Was there any part of your engagement about a service of six months?

A. We were engaged for six months.

Mr. McRea. What service?

A. I am not certain. We were to stay there to settle land; and it was supposed the settlement would be made in that time.

Q. What consideration were you to receive?

A. Ten dollars a month, and one hundred acres of land.

Mr. Wirt. Had you any manual exercise as you went down?

A. We had, on the roof of the boat, two or three times.

Q. The boats were roofed?

A. Yes, they were flat on the top; the exercise was of our own accord.

Mr. Hay. Did you see the same operation in other boats?

A. I did not.

Mr. Wirt. Did you see anything of the search by Colonel Fitzpatrick?

A. I was there. It happened at Thompson's bayou.

Q. Did Fitzpatricck see all the arms?

A. The muskets were taken from our boat before Colonel Fitzpatrick made the search.

Q. To what boat were they carried?

A. I know not; but they were taken out of ours.

Q. Do you know anything about the burying or concealing of arms?

A. I do not.

Q. Do you know anything of holes bored in the gunwales of Colonel Burr's boat?

A. I do not.

Q. You were in your own boat, I suppose?

A. I was. We were at too great a distance from them to have seen any such occurrence.

Q. Do you know anything of it from public conversation among the men?

A. I understood that the arms had been concealed. I heard it talked of in the company of the men, by different persons, that they were tied to a sawyer;* also, that they were taken up the bayou and buried; and that they were concealed underneath Colonel Burr's boat.

No cross-examination.

Chandler Lindsley.

MONDAY, *September* 21.

Question. Where did you begin with your voyage?

Answer. I descended the river with Mr. Ellis, from Pittsburg.

Q. What was the object of the voyage?

A. Mr. Ellis called it a trading voyage.

Q. Did you join the party at the mouth of Cumberland?

A. I did.

Q. What do you suppose was the force at the mouth of Cumberland?

A. I should suppose that there were about seventy or eighty men. The circle, to which Colonel Burr was introduced, consisted of thirty or forty; and I should suppose they composed about one half of the whole.

Q. Did you stop at Cincinnati?

A. I did.

Q. Did you receive any information of the party there?

A. I heard that Colonel Burr had been there a day or two before, and had excited some consternation among the people there.

Q. Did you stop at the falls of the Ohio?

A. The water was low, and occasioned us to remain there two or three days.

Q. Was any of the party there?

A. Mr. Kibby was there, engaging men to settle Washita land.

Q. Do you recollect his Christian name?

A. I do not.

Q. On what terms did he wish to engage?

A. Mr. Kibby stated to us the articles of agreement. They were nearly the same as those which Mr. Moxley has described.

Q. Were there any signatures to the articles?

A. There were about ten or twelve.

Q. What were the terms?

A. It obliged them to go down the Ohio and Mississippi, and ascend the Red River to the mouth of Black River, and those waters, up to the Washita river; and it was annexed, that, if the frontier was invaded, they were to resist.

Q. Did you descend the Mississippi?

A. I went to Natchez with Major Floyd and Ralston, and about fifteen others, in a keel-boat, purchased by Colonel Burr of Mr. Ellis.

Q. What was in the boat?

A. Bar-iron, hoes, mattocks, and a few barrels of apples.

Q. Do you know where the bar-iron and other articles were obtained?

A. Yes; they were purchased by Colonel Burr of Mr. Ellis, at the mouth of Cumberland.

Mr. Wirt. Was Mr. Ellis's being there accidental?

A. At the time Mr. Ellis was at the falls, Major Floyd talked of making a contract with Mr. Ellis for these articles: he did not, however, buy them, but told Mr. Ellis that he would see Colonel Burr on the river, and that he was confident that the Colonel would purchase the whole.

Q. Where were these articles from?

A. From Pittsburg.

Mr. Wirt. My object is to ascertain, sir, whether Burr's meeting with Ellis was in consequence of any previous arrangement between them, or the mere effect of accident. Can you inform me as to the point? Was Mr. Ellis's voyage preconcerted with Colonel Burr?

A. Mr. Ellis, sir, was on a general trading voyage.

Mr. Hay. How many of those articles were there?

A. I know not. Mr. Ellis has, I believe, an inventory of them; and he is here.

Mr. Wirt. Was Mr. Blannerhasset at the mouth of Cumberland when the tools were purchased?

A. He was.

Q. Was any proposition made to you to join the party? A. There was.

Q. Who made it?

A. Colonel Tyler asked me. I told him that if there was nothing hostile in their views, and there was a prospect of gain, I would join. He said if there was anything hostile, he would be as far from it as any man.

Q. Did you not join?

A. I did. I had a right to withdraw whenever I pleased. The greater part of Colonel Tyler's men were, I think, on the same terms.

Mr. Hay. Why did you make that reservation?

A. From the reports which were then in circulation.

Mr. Wirt. What were the terms?

A. I joined on the same terms as the other young men who were with him. Colonel Tyler told me he was going to settle Washita land, and those who went on first were at liberty to purchase land.

Mr. Hay. For what time did you engage?

A. I was at liberty to leave them whenever I pleased.

* A sawyer is the log of a tree, or a whole tree, fixed to one end in the bottom of the Mississippi, and plays up and down with the current, like a man who is sawing timber.

Mr. Wirt. Did you hear any observations from Colonel Burr at the mouth of Cumberland?

A. Only a few words. He said that he had intended to have communicated his designs at that place, but that certain reasons prevented him. I understood him to say that Colonel Tyler, Major Smith, and Floyd, would make those reasons known to us.

Mr. Wirt. Do you know anything of the transactions at Thompson's bayou?

A. I was not there.

No cross-examination.

Chandler Lindsley again called.

SATURDAY, *Oct.* 3, 1806.

Colonel Burr. Do you know whether Dunbaugh, after his examination, had an opportunity of seeing his deposition?

A. I recollect some time in June, he said he could recollect his affidavit given in New Orleans, *verbatim*. He said he had a copy of it. Some time afterwards he was in his chamber, and I was passing by or was in the same room with him, and I saw him on the bed with a paper in his hand. I asked him if it was a copy of his affidavit, and he said yes.

Q. Did you afterwards see it in his hand?

A. No.

Mr. Martin. At what time did you see him with that paper?

A. In the month of June, previous to his examination before the grand jury.

Mr. Hay. Where do you reside?

A. My former residence was in Connecticut.

Q. Where is it now?

A. I have not fixed the place, but expect to return to Bristol in Connecticut.

Mr. Wirt. Is that the place of your nativity?

A. Yes.

Examination of John Mulhollan.

MONDAY, *September* 21, 1806.

Witness. Do you wish me to state where I joined the party.

Mr. Hay. Yes.

Witness. I joined Mr. Tyler and Mr. Smith at Beaver, in Pennsylvania.

Mr. Hay. Was there any agreement between you, or what was your reason for joining them?

A. My first reason was, my meeting with a William Davis, from the back part of the State of New York. He said that he was going down with a party to see the country. I wished, too, to see the country, but Mr. Davis told me he could not engage me, but he would go to Beaver and mention me to Mr. Tyler. When Davis got to Meadville, he met with Major Smith, to whom he communicated my wishes, and informed him that I was at Waterford. Major Smith called on me at Waterford, presented me with Mr. Davis's compliments, and informed me that Mr. Davis and himself would be pleased to see me at Beaver. There I met with Mr. Tyler; he told me that he had an idea of going to the Red River to settle land.

Q. Did he mention Colonel Burr's name?

A. He did not mention his name while we were at Beaver.

Q. And why did you go?

A. I felt much disposed to see the country.

Q. Was there no particular contract made between you?

A. Not at that time.

Mr. Wirt. Was there any agency given you to engage men or provisions?

A. I was sent back to Waterford to hurry on salt for salting provisions that were expected at Beaver. I was also to engage what men I could; they were to find themselves in clothes and blankets.

Q. Did you engage any men?

A. Yes, several; about fifteen from Meadville.

Q. What terms did you hold out to those men?

A. They were to ascend the Red River.

Q. Were there no lands promised them? no compensation?

A. None.

Q. What instructions did you give them; or were they to go to Tyler?

A. They were to go to Colonel Tyler, at the mouth of Beaver, for such instructions as he thought proper.

Q. Did you receive any instructions as to the kind of men you were to engage?

A. None.

Q. As to the young or old?

A. I would not, of course, engage old men.

Q. Any with families?

A. Some with families did go; I was allowed to take any I thought proper.

Q. Did you go to Blannerhasset's island?

A. I did.

Q. Was it known at Beaver that the Marietta boats were to be of the party?

A. It was not. I knew that Blannerhasset was to join, but I believe the boat I was in would not have stopped at the island, had it not been grounded.

Q. Did Blannerhasset go with you from the island?

A. He did.

Q. Was there any difficulty about his going with you? was any vote taken?

A. Major Tyler and Smith asked us if we were willing that he should go with us; and we said we had no objection. It was mentioned among us, that he was under some apprehension of a mob arresting him.

Q. Was there any rumor or alarm among you about the militia of Kanawha or Wood county?

A. We had heard that there was a mob coming, and we were determined to resist them; but we should not have resisted the militia with legal authority.

Q. What do you mean by "legal authority?" do you mean that if they had a warrant from the civil authority, you would not have resisted?

A. Such was our meaning, but we would have resisted a mob.

Q. What do you mean by a mob?

A. If the mob had come, we should have asked for the authority under which they acted; and if

they had none, they should have gone away without gaining their intentions.

Q. Was there any preparation made for resistance?

A. Not that I know of.

Q. Any bullets run?

A. There were; but they were to kill game and shoot at marks, which we frequently did on the river.

Q. Where were you joined by other boats?

A. By two of Mr. Floyd's, at the falls of the Ohio.

Q. Did you see any arms?

A. There were about thirty-five or thirty-six muskets or stands of arms, which I saw when we got to the Mississippi.

Q. Any arms of any other description, such as rifles?

A. There were three or four rifles.

Q. What particularly happened on going down the river?

A. At Shawneetown there was an address drawn up to the Washita or Western Land Speculation Company, tendering our services in any legal and honorable enterprise. This was signed by all of Tyler's party.

Q. Who formed that company?

A. There were no names mentioned in the address; but I considered Colonel Burr as one, though his name was not mentioned.

Q. Who drew up the address?

A. Major Tyler and Smith.

Q. Are the phrases "legal and honorable enterprise," repeated from memory?

A. They are.

Q. Was it presented by Tyler and Smith?

A. It was.

Q. How many signers were to it?

A. About thirty or thirty-two.

Q. Had you any assurance that the plan would be disclosed to you at the mouth of Cumberland?

A. None from those who had a right to be informed. Such, however, was the talk among the men as we went down.

Q. When you were at the mouth of Cumberland, were you introduced to Colonel Burr?

A. I was, on the 27th December. We arrived there on the 26th.

Q. What took place on this introduction?

A. Nothing particular.

Q. At this introduction, did the party form anything like the three sides of a square?

A. They did.

Q. Was he introduced along the line?

A. He was, to the men, one by one.

Q. After this ceremony, was there any speech from Colonel Burr?

A. I was not near enough to hear what he said, but I understood he said he would impart something at another time.

Q. Did you receive any instructions to run bullets and make cartridges?

A. One day, while we were in the Mississippi, Colonel Burr came into our boat, and asked whether there was any one there who could make cartridges? I told him that I had never made any, but I believed I could make them, and I made three or four dozen.

Q. Did Colonel Burr act as the head of the party?

A. I considered him as such.

Q. Did you understand that the real object was to settle Washita lands? A. It was so stated.

Q. Was there no occurrence or particular conversation which induced you to believe there was a different object?

Mr. Botts. Was there any conversation in the presence of Colonel Burr?

A. It was not a general conversation.

Mr. Hay. Is it a fact, or is it not a fact, that many of the men did suppose there was a different object?

A. I do not recollect, nor did I attend to them; because I did not suppose they knew more about it than myself.

Q. Do you know anything about the seizing of Baton Rouge?

A. I never heard it before we got below Bayou Pierre, and then there were some conversations among the men about it; but I did not hear it suggested by any person that there was any design of invading any part of the United States, nor did I ever hear anything from Colonel Burr, or any of the leaders, about invading Mexico.

The counsel for the accused said that it was unnecessary to make any statement on that subject.

Mr. Hay. The present inquiry relates as well to the misdemeanor as to the treason.

Mr. Martin. We have never heard of such a charge before.

Mr. Hay observed that he had also reduced this charge to writing, and had notified its existence to one of the opposite counsel, though it had never been publicly read in court. The clerk then read the paper in the following terms:

"The attorney of the United States for the Virginia district charges Aaron Burr, Herman Blannerhasset, and Israel Smith, with a misdemeanor against the United States, in beginning, or setting on foot, or preparing, or providing the means of a military expedition or enterprise against Mexico, a province in North America of the King of Spain, with whom the United States are at peace."

Mr. Hay. It is immaterial, besides, whether this charge has been preferred; because, though the charge actually alleged is treason, yet if the other crime should occur during the investigation of the evidence, it is the province of the court to inquire into it.

Chief Justice. It would certainly be unnecessary to re-examine the same witnesses a second time.

Mr. Wirt. Did you then hear nothing of the Mexican invasion?

A. I did not, from any leading characters.

Mr. Hay. Who did you consider as the leading characters?

A. Colonel Burr, Tyler, Smith, Blannerhasset, and Floyd.

Q. Had you not been informed of the plan by the President's proclamation?

A. That did not reach us before we got to Bayou Pierre.

Q. Were you at Thompson's bayou?

A. I was.

Q. Do you know anything of the ground that was cleared for exercising the men?

A. I assisted in clearing it.

Mr. Burr. The witness does not, perhaps, attend to the question: Was this ground cleared for exercising the men?

A. There was a talk that it was for that purpose; but I do not know whether it was for that.

Mr. Wirt. Do you say that the men never exercised there?

A. Never to my knowledge.

Q. Do you know anything of the guard?

A. Yes. Some time in the afternoon, a young man came up the river in a canoe, and said there were four hundred militia, without any authority, coming to destroy the boats that night. This was told to Colonel Burr, and we determined to get out of their way, if possible. Major Floyd concluded to put out sentinels to give us information of their approach. The signal was to be the firing of a gun.

Mr. Wirt. I understand this bayou is below Bayou Pierre?

A. It is.

Q. I understood you also that you did not receive the President's proclamation before you arrived at Bayou Pierre?

A. I said that it had not reached us before we got to Bayou Pierre; but I am not certain whether it was there that we received it.

Chief Justice. Had you received the proclamation before the guard was put out?

A. I do not recollect.

Mr. Burr. Was it not afterwards?

A. I do not recollect; I heard that it was contained in some newspaper, perhaps in your boat.

Mr. Wirt. Do you know anything of the search?

A. I do; I was in our boat at that time. When Colonel Fitzpatrick came, Colonel Tyler lifted the curtain, and he was introduced. We did not change our posture.

Q. How many arms did he find there?

A. There were a couple of rifles belonging to a Mr. Lamb, and some pistols.

Q. Did you hear of the searching of the boats?

A. I did not trouble myself about them.

Q. Did you hear of the sinking of arms?

A. I did not.

Cross-examined.

Mr. Wirt. How many guns had you at Beaver?

A. Five rifles.

Q. Did you see any more guns at any other time?

A. I did not.

Q. Among the four boats that went from the island, how many?

A. Not more than five that I saw.

Q. Did you stop accidentally at the island?

A. I supposed so at first; but I afterwards understood that Colonel Tyler and Mr. Blannerhasset were connected.

Q. How much powder had you with you?

A. About twenty-five pounds.

Q. Did you not borrow from one another?

A. We did.

Q. Was the powder scarce among you at last?

A. It was.

Q. Was there any game killed?

A. I believe two deer were killed at the time we were at the island.

Q. Was there any disturbance on the island?

A. None.

Q. Had you any reason to believe that any of that party would have assisted in any unlawful design?

A. None.

Q. Did you see a printed report by Mr. Fitzpatrick?

A. No.

Q. Did you understand that the country was much alarmed there?

A. They were.

Q. And that the party was to be mobbed?

A. Yes.

Q. That they were coming on board at night with tomahawks and knives?

A. I do not recollect.

Q. Would not the militia have suffered extremely if I had not fed them?

A. I know that you sent over provisions to them.

Q. How many of them were there?

A. About seventy.

Q. Did you not understand that I had made a treaty with Cowles Mead, for the preservation of my people?

A. I did not know.

Q. Who sent us word that we must move down to the mouth of Cole's creek?

A. Major Fleehearty. The answer from Major Floyd was, that he must get more militia.

Mr. Burr. This was a piece of impertinence in Fleehearty; for it was after the stipulations entered into between Mr. Mead and myself. I was at that time fifty miles off, at Washington, Mississippi Territory, where I went to stand a trial.

Mr. Blannerhasset. Did you hear of any report about arresting me on the night I left my island?

A. I did hear something about it, but I believe it was not before the next morning.

Q. By whom? the militia?

A. No.

Mr. Hay. Did you not hear of an arrest by General Tupper?

A. I did not; but the morning after I left the island, Mr. Blannerhasset himself mentioned that he understood there was a writ or warrant to do it, and asked us if we were willing to take him along after *that* was out.

Mr. Wirt. Was Major Fleehearty a militia officer?

A. He seemed so, from his dress.

Mr. Burr. Was there not a good deal of talk about a Spanish war?

A. Yes. I saw a good deal about it myself in the newspapers.

Evidence of Hugh Allen.

TUESDAY, *September* 22.

Mr. Hay. Where did you embark?

A. I embarked at Beaver, with Major Tyler and Smith.

Q. On what terms?

A. Mr. Tyler and Mr. Smith told me they were going to settle lands; and whatever profits they shared I should share, I bearing an equal proportion of the expenses.

Q. How many men did you see at the mouth of Cumberland?

A. About seventy.

Q. Was that the whole party?

A. Perhaps there might be more. Mr. Tyler's party was about forty; and Mr. Floyd's about thirty or forty; so there were, in all, about seventy or eighty.

Q. How many men came with Mr. Burr to the mouth of Cumberland?

A. I do not know.

Mr. Wirt. Did Tyler's and Floyd's parties arrive there together?

A. We got there first, by a few hours.

Q. When did you arrive there?

A. On the evening of the 26th of December.

Q. Had Colonel Burr a party like Tyler and Floyd?

A. There were a number of boats there which I understood were Colonel Burr's.

Q. Did anything occur to change your opinion of the object of this enterprise?

A. The only ground of my ever changing my opinion was, when I understood that the Government designed to arrest Colonel Burr.

Mr. Hay. And do you think that men would have left the better part of the world to go and settle a wilderness? Why did you go?

A. I made my calculations on this subject; Mr. Tyler and Mr. Smith had said that the object was the settlement of lands which would be profitable.

Cross-examined.

Mr. Burr. How many guns were in your boats?

A. Five rifles, and one fusee gun.

Q. Did you get any more except at Blannerhasset's island?

A. None.

Q. Did you ever see muskets and bayonets in those boats?

A. Never.

Q. What was the construction of the boats? Were they able to get up the stream?

A. They were.

Q. Did you ever see any boats that could get up the stream with them?

A. I never saw the experiment tried.

Q. Do you know whether I had a single man at the mouth of Cumberland with me, except Dunnahue, the pilot?

A. I do not know him, nor how many were with you.

[Mr. Burr here stated that he had hired hands at Nashville to bring him down to the mouth of Cumberland.]

Mr. Burr. Were you present when I was introduced to the party?

A. I was; when you were introduced, you said you had intended saying something to us then, but for certain reasons of your own you had deferred it.

Q. Did I say that I had anything like secrets to disclose?

A. You did not.

Q. Had you any reason to suspect that any of the party meditated hostility against the United States?

A. Never.

Q. What do you call the captain of a boat? is it not every man who stands at the helm?

A. The way was to make him captain who is supposed to be the best waterman.

Q. How are new countries settled? Is it not the way to send a party on before, to explore it, and prepare for the reception of others?

A. I never settled a new country; but I suppose that is the way.

Mr. Wirt. Ay! that is an historical fact, for which we had better apply to the general records of nations.

Q. Did you see any powder on Blannerhasset's island?

A. I saw a quarter cask with about 25 lbs. of powder.

Mr. Burr. Did you use that continually on the river?

A. Those who chose did.

Q. Did you know of any more powder on board the other boats?

A. None, till latterly.

Q. Were there not some kegs of biscuit?

A. Yes.

Q. Were there any bullets in barrels?

A. All the bullets I saw were in canisters on Blannerhasset's island.

Mr. Wirt. Had you any reason to believe that you were going to New Orleans?

A. Not before I got to Natchez, when I determined myself to go down.

WEDNESDAY, *September* 23.

On account of Mr. Fisk's indisposition, the following deposition was taken and read:

The affidavit of David Fisk, of lawful age, who being first sworn before me, Daniel L. Hylton, a justice of the peace for the county of Henrico, saith: that some time in the month of September, 1806, a certain Davis Floyd, of the Indiana Territory, came to this affiant, and asked him if he did not wish to take a voyage down the river with him during the course of the fall or winter; that he was going to settle a new country, the Washita, on the Red river. This happened either the next day, or a few days after Colonel Burr had left Jeffersonville, the residence of the said Floyd. At that time this affiant did not tell him whether he would go or not; but about two or three weeks afterwards he did agree to go, the said Floyd having several times mentioned what a fine chance there would be for him; that they would not agree to give to any one man more than twelve dollars a month, and one hundred and fifty acres

of land at the end of six months, besides clothes and provisions; but as he and this affiant were well acquainted, if he would have confidence in him, he would do something very clever for him; and if they succeeded in their object, there would be fortunes made for all that went. This affiant asked what other object they had besides settling the Washita land. The said Floyd answered, that there was a new road to be cut a great distance, and several houses to be built, which would be a very profitable undertaking. No positive bargain was made between the said Floyd and this affiant. On the 16th of December, 1806, this affiant moved down the river from the falls of the Ohio, in the Indiana Territory, with the said Davis Floyd, with two boats and one batteau, which the said Floyd had built there. On the same day, just as they were about to start, they were joined by Herman Blannerhasset, Comfort Tyler, and Israel Smith, with four batteaux and a number of men; the exact number he cannot state, nor does he know the number that started with the said Floyd; but when the boats joined Colonel Aaron Burr at the mouth of Cumberland, (which was of a Saturday night, either on Christmas night or the first Saturday after Christmas,) he understood that the whole number of men, including those of the said Aaron Burr, were one hundred and three. After the boats had left the falls of the Ohio three or four days, he discovered for the first time, on board one of Floyd's boats, a chest and a box, the former of which, it afterwards appeared, contained muskets and bayonets, a few fusees, and blunderbusses and pistols; the latter rifles. A day or two afterwards, the said Floyd inquired of the men if they did not want, each of them, a gun to take care of; that he had some there which he was afraid would get rusty. The chest and box was then opened, and all the arms taken out and cleaned, and some of them occasionally used by the men in hunting as they went down the river. There were as near as he can judge, between twenty-five and thirty muskets with bayonets, two or three fusees, three or four blunderbusses, ten pairs of pistols, and about eight or ten rifles.

Some short time after the boats had joined Colonel Burr, and before they had got into the Mississippi river, while this affiant was lying sick on his trunk, he heard the said Floyd tell several of the men that they were going to take Baton Rouge and Mexico; this affiant asked how they were going to do it with so few men; the said Floyd answered, that a large party of men were to join us at Natchez, and General Wilkinson and his army were to join us at the mouth of Red river. Nothing of importance occurred till the boats got down to Bayou Pierre. A day or two before their arrival there, Colonel Burr took a boat and four or five men, and went on ahead, as this affiant understood, to do some business, which he expected to do before the boats got down. Floyd's boat, in which he went himself, and in which this affiant was, arrived there on a Sunday morning, and the other boats not till the evening. On our arrival, Col. Burr was standing on the bank of the river, about a mile above the town; some short time after the men from our boat went ashore, this affiant saw Colonel Burr and a certain Robert A. New, (who had the charge of Floyd's boat in his absence, he having then gone to Natchez,) talking together for some time. The said New then came on board our boat, and called all the men into it, and said he understood they were all going to be stopped, and inquired of them whether they would stand by Colonel Burr and go on, or quit. Most of the men were for going on, but two or three were for quitting. In the course of that day, this affiant mentioned to the said New that he mistrusted they were going on some unlawful scheme. He assured him that they were not, that nothing was going to take place but what was lawful and countenanced by the Government. After dark the boats were removed over to the other side of the river. This affiant inquired the reason of their being removed, and was answered by the said New, that there was a party of men coming to take them, and it was best for them to make their escape. The boats lay seven or eight days at that place, and then moved about six miles lower down. While the boats were lying there, they were searched by several military officers, by the permission of Colonel Burr; but the night before they were searched, all the muskets and pistols, except a few pairs belonging to individuals, were taken out; the rifles were left. This affiant never knew what became of the muskets and pistols; some of the men said they were sunk in the river, others that they were hid in the woods. One night, while the boats were lying at the place, a young man came and said there were three or four hundred men crossing above us, and many below us, and that we should all be taken. A guard was posted at some distance from the encampment on that night, but what their orders were this affiant does not know, as he was not one of the number. After our removal from this place, Colonel Burr went to the town of Washington to stand his trial; but it not coming on, he returned. He remained with the party one night, then went again to take his trial, and did not return till it was over. He remained with the boats one day, told the men that he stood his trial, and was acquitted; but that they were going to take him again, and he was going to flee from oppression. He said that what property there was the men might sell, and make the most they could of; and if there was not enough to satisfy them, they might go to the Washita land, and take up what land they wanted, and go to work upon it. The boats and provisions were taken to Natchez, and part of them sold, and part of the provisions stored which would not readily sell, and the money divided among the men. The boats were different in their construction from any this affiant had ever seen, rather larger than were usual on those waters, and such of them as were sold, brought seventy-five dollars apiece—the usual price of boats being from twenty to thirty dollars. But there was a great demand for boats at that time to freight cotton down the river.

Q. After the boats and men had joined Colonel Burr at the mouth of Cumberland, who appeared to have the command of the expedition?

A. It was generally understood that the expedition was under the command of Colonel Burr; but I do not recollect to have heard him give any orders, except as to the sale of the boats and provisions, after we were stopped; though I often saw him in conversation with Blannerhasset, Tyler, Smith, Floyd, and New, and supposed that he communicated his orders to them.

DAVID FISK.

HENRICO COUNTY, &c.

Sworn to before me, in due form, agreeably to law, this 22d September, 1807.

DANIEL L. HYLTON.

Question by defendant. How did you understand the number of men to be one hundred and three?

A. From some of the men; I never counted them. This included the men in all the boats at the island.

Q. How many men came with Colonel Burr?

A. I do not know, but not more than three or four, I believe.

Q. Do you include Dean's, Ellis's, and Boyce's boats? A. Yes.

Q. Where did the conversation with Floyd about Mexico and Baton Rouge take place? and was Colonel Burr, Blannerhasset, or Smith, present?

A. I do not recollect at what place it happened; but neither of the three gentlemen named above was present.

Q. Was Colonel Burr present when the boats were searched, or was he then at Washington?

A. He was with the boats.

Q. Did Blannerhasset have any command over any of the boats?

A. None, except his own boat, which was in company.

Q. Did you not at this time expect a war with Spain?

A. I did; it was the general expectation of the party.

Q. How did you understand Mr. Floyd as to Mexico and Baton Rouge?

A. I expected we were going on in the event of war, and that we should be joined by the army of the United States.

Q. Were you not told that, in the event of no war, you were to settle the Washita lands?

A. Yes; and, after we were stopped, Colonel Burr advised us to proceed and make the settlement.

SEPTEMBER 23.

The foregoing questions were put to Mr. David Fisk by the counsel for Colonel Burr, and his answers thereto sworn to in my presence, a justice of the peace for the city of Richmond.

ANDERSON BARRET.

Evidence of Alex. Henderson, of Wood county.

About the last of August, or first of September, 1806, Mr. Blannerhasset wrote to me that he and Mrs. Blannerhasset intended to visit my family in the course of a few days. On the day appointed he and Mrs. Blannerhasset came in company with my brother John. After taking some refreshment, Mr. Blannerhasset entered into some conversation about the severance of the Union; he mentioned the advantages that would arise to the people in the Western country from a separation; that we were paying three or four millions of dollars to the support of the present Government, when with one hundred thousand we might support a government of our own. He mentioned Colonel Burr's name, as a man of brilliant or splendid talents, as well as of great goodness of heart, (or some expression of that sort,) that he had made the fortunes of hundreds without at all advancing his own; he mentioned, as an instance, the Manhattan Bank and Company. This conversation took place before dinner. After dinner a walk was proposed to my mill. I objected to it, as I was weak, and not able to walk. Mr. Blannerhasset mentioned that I was as well able to walk as himself, and insisted that I should go along with my brother and himself. Shortly after we got into the meadow Mr. Blannerhasset mentioned that he had a great deal of confidence in my brother and myself. We assured him that we should not betray it, and that it was not misplaced. He then mentioned that, under the auspices (I think that was the expression) of Colonel Burr, a separation of the Union was contemplated; that no particular line of division had as yet been fixed on, whether it was to be the Allegany, or whether or not the South Branch of the Potomac; (I well recollect that he mentioned the rich settlement on the South Branch was to be included;) that New Orleans was to be seized; the bank or banks of New Orleans to be seized; that all the military stores in that country were to be seized; that a park of artillery, at or near New Orleans, which was said to belong to the French, (I think fifty pieces,) and which Mr. Jefferson was too economical to purchase, was also to be seized, and that country revolutionized in the course of nine months. He mentioned that the principal characters throughout the Union were acquainted with or concerned (I do not recollect which) in the enterprise; that the officers of the Army and Navy were secured. He mentioned General Eaton as being engaged, Mr. John Graham, Mr. Alston, Colonel Burr's son-in-law, as enamored of the scheme. He mentioned other names, I think, but I cannot recollect any, except Robert G. Harper, who was either concerned or engaged. My brother asked Mr. Blannerhasset what kind of Government was intended to be established? Mr. Blannerhasset mentioned that it was not yet determined on, but a more energetic one than the present was contemplated. My brother asked him if any foreign Power was to be engaged in it? He said that there was not. My brother asked him if John Randolph, member of Congress, was acquainted with and engaged in it? Did I mention that Mr. Blannerhasset said that he himself had embarked in the scheme? Mr. Blannerhasset replied that Mr. Ran-

dolph was not. He mentioned the great advantage that would arise to those who took an early and active part in the enterprise. Mr. Blannerhasset then mentioned his own property.

Mr. Wirt. What it was worth?

A. Yes. He mentioned that he was a partner in the firm of Dudley Woodbridge & Co.; that he had property in the funds of Great Britain. He mentioned that he had five thousand dollars (I think such was his statement) in the hands of a gentleman in Philadelphia or New York; that he had a suit against Mr. Woodbridge's father, in Marietta, for some five or ten thousand dollars, I do not remember which. He valued his property on the island at fifty thousand dollars. I do not recollect of any other particular communication from Mr. Blannerhasset.

Mr. Hay. With what view did you understand this detail of his property was made?

A. Shall I tell you my impressions? I have omitted one particular expression of his as relating to his English funds: "that they could not get at them."

Mr. Wirt. Did he say who *they* were?

A. He did not; but I supposed the Government of the United States, in case of hostilities.

Mr. McRae. Did you understand with what view it was he spoke of his other property?

Mr. Martin objected to any such interrogatories about the *impressions* or *inferences* of a witness. If the publication of this trial goes to Europe, what a contemptible opinion will it afford of our judiciary proceedings!

Chief Justice. Was there anything else, besides what you have stated, from which you made this inference?

A. Nothing else.

Mr. McRae. Was there anything calculated to make a particular impression on your mind?

A. My impression, from his statement, was, that he intended to show, if he risked so much property, that we might surely risk the little we had.

Mr. Wirt. Will you state the answer you made to this application?

A. We did not positively tell Mr. Blannerhasset that we would join in the enterprise, but that we must take time to consider it; that we had relations on this side of the mountains, whom we must consult.

Mr. Wirt. Did Mr. Blannerhasset mention the effect this revolution would have on Wood county?

A. He said that it could not long remain neutral, and that we must take an active part for or against.

Mr. Blannerhasset. Do you mean Wood county?

A. I mean that part of the country.

Alexander Henderson's testimony continued.

WEDNESDAY, *September* 23, 1806.

Mr. Wirt. Could you understand why your brother inquired whether John Randolph was not concerned?

A. Because Mr. Blannerhasset had mentioned that the leading characters in the Union were concerned, and we considered John Randolph as a man of great character, and a leading man.

Mr. Wirt. Did you understand whether he said anything of Mr. Jefferson?

A. Mr. Blannerhasset said, if Mr. Jefferson was any way impertinent, that Colonel Burr would tie him neck and heels, and throw him into the Potomac.

Q. What did he say of his means of opposition to the Government?

A. He mentioned that with three pieces of artillery, and three hundred sharpshooters, he could defend any pass in the Allegany mountains that he had seen, against any force the Government could send against him.

Mr. Wirt. Did he show any composition he was about to publish?

A. He showed me the first and second numbers of the *Querist*, which he intended to publish; at all events he showed me one, which he read to me, and then gave it to me to read the over night; I kept it all night, and returned it to him next morning.

Mr. Hay. Did he say that he had written those pieces?

A. So I understood.

Mr. Wirt. Did he say that he was going to publish them?

A. He said that he was going to Marietta next day to attend to the publication; for that the printer was a timid man, and required to be backed.

Q. What did you inform him about your own intentions?

A. We informed him that we knew not whether we could or could not join in the scheme; we, however, told Mr. Blannerhasset that he must not consider us in any way committed.

Mr. Wirt. Do you recollect if he told you what particular circumstances would prevent your long remaining neutral; was it any commercial arrangement?

A. I think he said that, being in possession of the New Orleans country and the mouth of the river, we could not remain neutral.

Q. Do you carry your produce to market through that channel?

A. We do not.

Mr. Hay. He said that Mr. Graham was engaged; had you seen Mr. Graham on the subject?

A. I had not seen Mr. Graham for eight or ten years before; but I saw him a short time after this interview. On the 20th of November I received a letter from Mr. Graham, earnestly requesting an interview with me at the mouth of Little Kenawha. I met him there on the 22d. I must confess that I felt every inclination to disclose this secret to him when I first met him, but I did not conceive myself justifiable, because I had promised to keep this communication secret. Considering, however, that Mr. Blannerhasset had positively assured me that Mr. Graham was positively concerned in it, I asked him first if he was concerned in any scheme with Colonel Burr down the river. He said he was not; and, moreover, that he was authorized to prevent and arrest any such illegal

proceedings. I did, then, conceive myself justified in communicating to him the substance of the scheme. Before this time, about the 1st of October, we had determined to oppose the scheme; and went down to the mouth of Kanawha to inform Mr. Blannerhasset of our intentions, but he was gone down to Kentucky, perhaps with Mr. and Mrs. Alston; and we then sent a message to that effect to Mrs. Blannerhasset, that they might not be deceived as to our intentions. At the same time, my brother and myself proposed a meeting of the citizens of Wood county, in order to obtain the sense of the people on what course they ought to pursue.

Mr. Hay. And was there a meeting?

A. There was.

Q. Did you come to any resolutions?

A. We did.

Mr. McRae. What was the substance of them?

A. That we were determined to support the constituted authorities of our country.

Mr. Martin. And were the resolutions published?

A. They were, I think, in a paper published in Morgantown.

Mr. Hay. Do you know Blannerhasset's writing?

A. I am not certain.

Q. Did you ever see him write?

A. I do not recollect.

Q. Did you receive those two letters from him?

A. I did.

Mr. Hay. This letter, dated on the 31st August, mentions his intentions to visit you.

Witness. It may not be improper to state what gave occasion to that letter. Mrs. Blannerhasset insisted on taking my little boy home for two or three weeks with her family; I agreed to it reluctantly. Three or four days after they had left us, I sent my overseer for my boy, who brought the child, with that second letter from Mr. Blannerhasset. This second letter covered an extract from a Marietta paper, signed "Querist," relative to the "Western World," and referred to in that letter.

Mr. Wirt. Do you know Peter Taylor? what is his character?

A. I have heard no one speak of him but Mr. Blannerhasset, who spoke of him in very high terms.

Q. What is your brother's name? John G. Henderson?

A. Yes.

Q. Did he not represent Wood county?

A. He did some years ago.

Cross-examined.

Mr. Blannerhasset. Have you not been a representative of Wood county?

A. Yes.

Q. You lived in Wood county some time before I knew you?

A. I did.

Q. Had you any reasons for not cultivating my acquaintance sooner?

A. I had: the reasons were partly private, and partly political: I have no objection to state those reasons: the political reason, that you were a democrat, and I was opposed to the present administration.

Q. Do you not recollect that I opposed the election of your brother, J. G. Henderson; and that my vote was refused?

A. I do: for I then personated my brother.

Q. Do you not recollect that it was refused because I had at that time no deed for my land?

A. I do.

Q. Do you not recollect that I had the honor of voting for you on a subsequent occasion?

A. I do.

Q. Was it not after that election that our acquaintance was formed?

A. It was: before that election I do not recollect to have known you.

Alex. Henderson's cross-examination continued.

THURSDAY, *September* 24, 1806.

Mr. Blannerhasset. Do you recollect, at the time of our conversation, you expressed any personal dislike of Colonel Burr? Did you not express a sense of hostility towards him?

A. I am sorry that the gentleman has put the question; I am sorry to wound any man's feelings wantonly. But I always thought him a dangerous man, and the late occurrences have not at all changed my opinion.

Mr. Martin. How long has your opinion of him been formed?

A. Ten or fifteen years ago, when he was making the tour of Virginia.

Mr. Martin. Not when he was said to be fixing means to overturn the Federal administration?

A. I do not recollect; but I heard much at that time of Colonel Burr.

[Mr. Hay here wished to identify the two letters, which Mr. Henderson had presented to the court from Mr. Blannerhasset.

Mr. Botts, however, admitted them.

They were then read by M. Hay, but they contained nothing important. The examination then proceeded.]

Mr. Hay. Did you, sir, read the "Querist?

A. I read the first number in manuscript; it was signed *Querist.*

Q. I think you said, yesterday, that Mr. Blannerhasset confessed he was the author, and was going to Marietta to publish it?

Mr. Blannerhasset rose, and objected to reading these publications on such evidence. He observed that somebody may have written under the same signature on the very same subject; and that there was a lacuna or chasm which was required to be filled up.

Mr. Hay. We will fill up that chasm; Mr. Neal copied it.

Mr. Neal was then called into court and sworn.

Mr. Hay. Will you state to the judge what you know of the publication in the Marietta Gazette, under the signature of *Querist*?

A. About 1st September, Mr. Blannerhasset sent for me, and told me that he had some-

thing to copy about the division of the States, and the printer had met with some difficulty in understanding the writing of the first number. I copied the second and third numbers, and carried them to Fairlamb, the printer at Marietta, and gave them to him.

Q. Did you read the papers as they came out?

A. Yes; Mr. Blannerhasset supplied me with the whole.

Q. Did they correspond with the manuscript?

A. Yes; the very same, I think.

The court accepted them, but, on the suggestion of Mr. Hay, the reading was waived, and they were to be put into the possession of the Chief Justice.

At Mr. Hay's suggestion, all the witnesses who had been examined were agreed to be discharged, except General Eaton; he declared that he did not "wish to go."

Alexander Henderson again called in by the counsel for the accused.

Here, at Mr. Wickham's request, the counsel for the prosecution read the numbers of the *Querist*, from the Ohio Gazette. They consist of a short interlocutory essay, containing some strictures on "The Western World," and of three other numbers, whose decided object appears to have been to demonstrate to the Western people the advantages that would result to them from a dissolution of the Union, and their *constitutional right* to adopt this expedient. Every line of them breathes the air of a discontented, disaffected, and revolutionary spirit.

Mr. Wirt (to the court.) It is remarkable that Col. Burr was at the island on the 1st of September, and the first number of the *Querist* is dated on the 4th.

Evidence of John Graham.

THURSDAY, *Sept.* 24.

In the latter end of October last, I received a letter from Mr. Madison, requesting that I would pass through the Western country, on my return to New Orleans. I know not whether it be proper to assign to the court the reasons of this wish. It may serve, however, to explain my conduct in the Western country. Mr. Madison stated to me, as a reason for this request, that Government had received information from various quarters that a project was on foot to sever the Union, or to invade the territory of Spain.

Mr. Wickham objected to this explanation.

Witness. It was to show that I had acted in obedience to my duty as an officer of the Government.

Mr. Wickham. What office did you hold?

A. I was Secretary of the Orleans Territory.

When I arrived at Marietta, about the middle of Nov., I made inquiries, and heard what it may not, perhaps, be proper to state. Mr. Duval called on me, and informed me that Mr. Blannerhasset had just arrived with him, and would wait upon me. After passing the usual compliments, and expressing his pleasure at seeing me, he begged leave to read to me certain letters, which he had received by Captain Elliot of the Western country, who had just returned from Pittsburg. Mr. Blannerhasset made many inquiries relative to Comfort Tyler, Dean, and Butler, and the preparations which they were making for their expedition down the river; what number of men and settlers they had obtained. Mr. Elliot gave him to understand that there would be more settlers than there would be boats for them. When Mr. Blannerhasset received this information, he observed that they could descend in his boats, as he had more boats than men. Before Capt. Elliot quitted the room, Mr. Blannerhasset handed me a letter, which he had received, a few days before, from Col. Burr, in Kentucky. Shall I state my recollection of the contents of that letter?

Mr. McRea. Do you believe the letter to have been Col. Burr's?

A. I believe it was Col. Burr's writing; for, though I had never seen Col. Burr write, yet I had seen many letters said to be written by Col. Burr. I merely mention this letter to show that it gave rise to a conversation between Mr. Blannerhasset and myself, relative to the contents of this letter. The conversation was somewhat desultory, nor do I particularly recollect the order in which the several topics were introduced. In general, I recollect that Mr. Blannerhasset animadverted upon the conduct pursued towards Col. Burr at Frankfort; stating however, his belief that this conduct was not authorized by the Government. He mentioned that Col. Burr had purchased, from Colonel Lynch, I think, a certain part of the Baron Bastrop's grant in the Territory of Orleans. He stated, also, that he was to have an interest in his purchase, and seemed desirous of impressing on my mind a belief that the object of his preparations was the settlement of this land; but I cannot now recollect that, in the course of conversation, he did positively avow it. His object seemed to be to avoid an explicit avowal; but he said that this was their object; that it was a legal one, and Government would have no right to interfere, until it was ascertained that they (meaning Colonel Burr and himself, as I understood) had an ulterior object. He contended that they had a right to go towards this object with just such preparations as they thought proper. This was an opinion in which I did not acquiesce. I made few inquiries; but he admitted, in the course of conversation, that he was building boats for the expedition in which he was engaged with Colonel Burr; that he was engaging young men, single and without families, to go down armed; he said they would have no cannon, but they would have rifles. He stated, in the course of conversation, the use to which these rifles might be applied—to resist the Indians, and Spaniards, or to kill game. It is justice to Mr. Blannerhasset to add, that he said he did not solicit men to go; that he took such only as pleased to go; and that he did not expect more than three hundred men would go with him. He stated, also, that he was engaging provisions for this same expedition. From what I had heard after my arrival at Marietta, and from

the manner in which Mr. Blannerhasset entered my room and made those communications, I was rather induced to believe that he conceived me to be one of the party.

Q. Why, from his manner?

A. My acquaintance with him before was slight, and yet he was extremely polite to me, and expressed how happy he would be at seeing me in his own house. For reasons which it is unnecessary to take up the time of the court with, I was anxious to undeceive Mr. Blannerhasset. I asked him if he had stated I was one of the party. He said that he had, and that he understood so from Colonel Burr. When I assured him I was not, he expressed considerable surprise, not by verbal declarations, but by the marked air of his countenance. He observed to me that I did not know Col. Burr, and passed some eulogiums upon him; and asked me, in a very impressive manner, whether I had not heard of an association in New Orleans for the invasion of Mexico. I told him that I had not, and ventured to assure him that there was no such association there. He told me that there certainly was, and that about three hundred men had signed to such an association, (I think that was his expression,) for the purpose of invading Mexico. After I had repeated my thorough conviction that there was none such, and assigned the fact of his being deceived about me as a presumptive reason why he should be deceived about others, he told me that he had obtained this information from Mr Bradford.

Considering Mr. Blannerhasset at that time as a deluded man, I endeavored to draw him off from the undertaking in which he was engaged; and, considering it was more the policy of the Government to prevent than to punish such enterprises on the Ohio, I informed him that, so far from being concerned in the plan, I was an agent of the Government authorized to inquire into the facts relative to this enterprise in the Western country, and to take such steps as might be necessary for repressing it. I then stated to him, from reasons drawn from Colonel Burr's visit to New Orleans in the preceding Summer, from the information which the Government had received, and from the nature of the preparations which Mr. Blannerhasset himself was then making, why I believed that the object of Colonel Burr was either to attack the territories of the United States, or those of Spain. I assured him, at the same time, that any collection or combination of armed men on the Ohio would, under these circumstances, be considered as a violation of the laws, and repressed accordingly. He again contended that they had a right to go down the river as they thought proper, inasmuch as they avowed the settlement of the Washita, which was a legal object. Though we could not agree on this point, he asked me whether there would be any objection or opposition made to those men, if they went down in small parties? I gave him to understand that this would depend upon circumstances; but that, when they were collected, they would be arrested, and the enterprise would end in the ruin and disgrace of all those who were concerned in it.

During this conversation, I stated to Mr. Blannerhasset, pointedly, that I knew not the opinions of Mr. Jefferson or Mr. Madison; that these were my own opinions; and that I had the power to act under the Government of the United States as circumstances required; that I was authorized to call on the constituted authorities of the country, if the Constitution was about to be violated. I wish the court to understand that I was to consider the moving down the Ohio as a violation of the law, and I was then to call on the constituted authorities. When I spoke of the reasons which influenced my belief as to Colonel Burr's plans, Mr. Blannerhasset observed to me, that, however acute the opinions of gentlemen might be, he and Colonel Burr were as well acquainted with the Constitution and the laws as the Administration itself; and that they knew very well what they were about.

Q. What produced this remark?

A. I do not recollect, but perhaps it may have been the arguments which I had used to show that the expedition was a violation of the laws. Mr. Blannerhasset said that he had joined his friends in this undertaking, and could not abandon them, unless they consented to give the thing up; and asked me if he was at liberty to communicate to Colonel Burr the information I had given him. I told him he was. I do not recollect whether I have mentioned the opinion I expressed to Mr. Blannerhasset of the validity of Bastrop's grant. I told him all that I knew of the title, and that Colonel Burr would have no title to it; and that, if he had, the Orleans land could be no object with Mr. Blannerhasset.

Mr. Wirt. How came you, sir, informed about this title?

A. I had been at New Orleans, where the subject was much talked of,

Q. Have there been any judicial proceedings about it?

A. I told Mr. Blannerhassett that Mr. Lynch claimed under Mr. E. Livingston; that this was a considerable purchase: and that Mr. Livingston had invalidated this contract in court.

[Mr. Burr. I deny that this is a fact.]

The next day, perhaps that afternoon, I met Mr. Blannerhasset at another house, in company with gentlemen, most of them strangers to me. Mr. Blannerhasset was speaking, and avowing that Mr. Burr had a great many friends in Kentucky. I observed that this would much depend upon his object; if to settle the Washita lands, the people would wish him well; but if it was to attack the territories of Spain, or those of the United States, he would have very few friends. In reply, Mr. Blannerhasset observed that, whatever was his object, he either had, or would have, a great number of friends. This was in a public room in a tavern; several gentlemen were present; I recollect particularly a Major Sproat. Either on that evening, or the evening of the next day, Mr. Blannerhasset said he was writing to Colonel Burr. He invited me to his room, and

wished to know how much of our conversation he might communicate to Colonel Burr? I told him the whole, if he chose; that the information was intended for him, but that he might communicate it to Colonel Burr. During this time, and for a few days afterward, the intercourse between us was friendly; but, after I had had a conversation with Mr. Henderson, I had no further communications with him, save dining with him one day at the same table, and he arose immediately after dinner; and I did not see him again until we met in the Mississippi Territory.

Mr. Hay. Had you any communication with Mr. Burr?

A. I had, and in the Mississippi Territory, too. In consequence of the information I had received from Mr. Henderson and others, I lodged information with the Governor of Ohio, and a law was passed; and I was also instrumental at Frankfort, in Kentucky, in the passage of a similar law. Their object was to put an end to these expeditions. When I arrived at the little town of Washington, in the Mississippi Territory, about the latter end of January or beginning of February, I heard that Colonel Burr was in the house.

Mr. Hay. Where is Washington? on the Mississippi river?

A. No: it is ten miles from it, and seven miles back of Natchez. It is the seat of Government of the Mississippi Territory. I waited on Colonel Burr, principally with a view to ascertain whether the information I had given to Mr. Blannerhasset had been communicated to him. I asked him whether Mr. Blannerhasset had communicated our conversation to him. He said he had. I told him, on entering his room, that I had just arrived from the upper country, and perhaps he might be anxious to hear the news. He told me that Mr. Blannerhasset had accused me of a breach of hospitality. I replied that I never was in his house in my life. He spoke of his protested bills, drawn in Lexington, and seemed to attribute their protest to the measures adopted by the Government. I told him that, just before I left Lexington, the merchants there had received information that they would be paid. He said that they ought to be paid, as the man on whom they were drawn had the funds to pay them with. He then spoke of the measures pursued by Government as ruinous and rigorous, (I am not certain which was his expression;) that they had detained his people.

Q. Was this before or after his trial?

A. It was before; he had then entered into recognisance.

He said that he had invited investigation into his conduct; he spoke of the measures of the military, and his determination to resist them; I understood him to mean the military of the United States; he either said he had, or that he would, order his people to resist them. He said that he had claimed the protection of the civil authority, and thought that protection would be adequate to his safety. He spoke, too, of the Washita settlement; I believe he told me that he should send his people there, but did not know whether he should venture into the Territory himself; intimating, as I thought, an apprehension of General Wilkinson. He asked me, if I knew what had given rise to the President's proclamation? I told him that I did not, unless it was General Eaton's communication. The court will see, from the date of the proclamation, that any information I could have imparted had not then reached the seat of Government. Colonel B. observed, that the machinations of his enemies had led to these proceedings; and that facts did not support and justify them. I assured him that those who were alarmed and agitated were not his enemies; at least, this was the idea I intended to convey; and after stating to him the alarm extending through the Western country, I proposed to him that he should make some public declaration as to his real object. His reply to this was, that he was a party concerned, and that no declaration of his could have any effect. He seemed disposed to ridicule the idea of his bringing about a separation of the Union by physical force; that it was to be produced by moral, not physical causes. I mentioned to Colonel Burr that I had heard in the Western country of a considerable number of men, perhaps two thousand, being collected for the purpose of invading Mexico. His reply was, that he supposed that event was in the case of a war with Spain. I told him no, that I had not understood it as depending on that condition. He then said something about the Washita lands, and replied, that, perhaps, when they had a separate Government, something of that sort might be attempted (meaning, as I understood, the invasion of Mexico.) Soon after this, or at least before I heard any explanation of what he meant by a "separate Government," a gentleman of his family came in, and I took my leave. I had no further conversations with Mr. Burr or Mr. Blannerhasset. I lodged an information against Mr. Blannerhasset, and was with him before a magistrate.

Mr. Hay. Did you make any particular observations to Mr. Blannerhasset about the sort of preparations he was making?

A. He spoke of the settlement of the Washita as their object. He never positively told me it was, but he said they avowed it as their object. I observed to him as a reason why I should think it was, that young men without families, or without any of the implements of husbandry, were engaged to go. He said that their arms were to kill turkeys or Indians. He then launched out into an abuse of the Administration, their neglect of the Army and Navy, &c. I forgot to state this circumstance. When Mr. Blannerhasset met me, to know how far he was at liberty to communicate my opinions to Colonel Burr, I urged to him the impropriety of his engaging in these objects; he said it was impossible that Colonel Burr could have so much deceived him and his son-in-law, Mr. Alston.

Mr. Wirt. Was this remark after you had announced yourself as the agent of Government?

A. It was.

Q. Did he say anything to your objection about the want of implements of husbandry?

A. He did say something about the opening of roads, but he never did tell me the real object.

Q. Do you know anything of the Washita land?

A. I never was on it.

Q. What is its character?

A. Some say it is good, and some say it is bad. I believe the greater part of it is covered with water, but there is some very fine land.

Mr. Graham cross-examined.

THURSDAY, *September* 24.

Mr. Burr. Did you ever see Bastrop's patent?

Answer. Never.

Question. Did you read it?

A. No: I always understood that there never was one.

Mr. Burr. You have said that the greater part was water; I will assure the court that it was laid out without any water. Were you ever examined before?

A. Yes: I made a deposition when I lodged information before the Legislature of Ohio.

Q. Were you examined on any other occasion?

A. I was before a grand jury.

Q. Did you say anything then of a conversation you had with General Nevill?

A. Yes: I told General Nevill that I had come to make some inquiries into this affair. General Nevill informed me what had passed in his conversation with Mr. Morgan. He said the people had apprehended that your object was the separation of the United States; but that if it was the invasion of Mexico, you would be better received on your return than you had ever been.

Q. Did you not then speak of the boats?

A. I did.

Q. Did you not say they were unfit to go up the stream?

A. I so understood at that time.

Q. Do you know that they were seized by Government to send troops up the stream?

A. I did not hear of it before I came here.

Q. Did I give you a welcome reception?

A. I was not acquainted with your manner. It was cold, but I thought respectful.

Q. Have you not heard Governor Williams, Mead, and Rodney, say that they would not suffer the military to take me?

A. I most certainly recollect that I both thought and said that it was improper to take you by military authority; and I heard Governor Williams say, if the attempt was made, he was not authorized to sanction it.

Q. Had you not heard of the stipulations made to me by Williams and Mead?

A. I knew not of Governor Williams stipulating with you; I heard of Mr. Mead's doing it.

Q. Was there no law to arrest me?

A. I mentioned to Governor Williams that, if the laws were not sufficiently energetic to meet such occurrences, it was better to provide one; but I never saw the law.

Q. Did you not hear of an officer being there to arrest me?

A. I had a conversation with a Lieut. Peter, who was lately in this place, relative to this subject.

The counsel for the prosecution objected to this course of examination.

Chief Justice. If Mr. Burr means to allege these measures as an excuse for his own military preparations, he may press these inquiries.

Mr. Burr. I did suppose, from the sort of duties which Mr. Graham discharged in that country, that he must have known of the stipulations of Mead and Williams; and that, in direct violation of these, a party of officers in disguise, (that is, without their uniform,) and with concealed weapons, as dirks and pistols, were there to seize me. Mr. Graham certainly knows something on this subject.

Mr. Graham. I can only speak of my conversation with Governor Williams and Lieutenant Peter, for with no others did I communicate on this subject. Governor Williams told me that a Dr. Carmichael had been authorized to come to the Mississippi Territory and seize you; whether this was before or after your trial, I know not. He said that he was extremely unwilling to have any such thing done. I observed that it was extremely improper to suffer a person to be seized, who was then in the custody of the law. He said that he had remonstrated with Doctor Carmichael; that Doctor Carmichael had given it up, and returned.

Mr. Burr. Did Carmichael belong to the Army?

A. No: to the Mississippi Territory. I was proceeding to state that the night Colonel Burr left Washington, I heard some of the officers in the room in which I slept conversing about him, and one of them observed, that if Colonel Burr was not arrested on that night, he would make his escape. The gentlemen left the room, and I afterwards understood from Lieutenant Peter, that an application had been, or was about to be, made to Governor Williams, for permission to arrest Colonel Burr. Lieutenant Peter having understood that I had heard part of this conversation informed me that he had come with officers to arrest Colonel Burr; and I advised him to do nothing that would violate the laws of the country. He gave me to understand that, at that moment, he felt himself bound to obey the orders of his General, like a good soldier. I urged every consideration I could suggest against the exercise of military authority; and I did then understand that it was not his intention to proceed against Colonel Burr. Indeed, I understood that Colonel Burr had made his escape. I advised Governor Williams to make such arrangements with him as would send him on to Washington for trial, or to detain him in that Territory for trial.

Mr. Blannerhasset. You stated that you had given information against me, and led to a prosecution?

A. I did not say that I had led to a prosecution, but only that I had given information against you, that you might be taken to the district where the expedition had been fitted out.

Q. Why did you prefer Judge Toulman to Judge Rodney; the last being the senior judge?

A. I made no choice.

Q. Did you not understand that Judge Toulman was the judge of Tombigbee county?

A. I understood that he was judge of the Mississippi Territory, and Judge Toulman still insists upon it that he possesses this authority.

Q. Did you not apply to the Attorney General of that Territory?

A. Certainly not. Judge Toulman would have interfered, but Judge Rodney issued a writ of habeas corpus.

Q. Was it by direction or request of the Government, that you informed against me for the misdemeanor?

A. By neither.

Q. Do you not expect to pay the $1,000?

A. I expect not.

Q. To whom are you to pay it?

Mr. Graham here addressed the court; he said that Judge Rodney had refused to send Mr. Blannerhasset round for trial; but held him to bail; that he himself had been recognised; that the court was to sit some time in May; the judge considered the Supreme Court as the proper tribunal; the Attorney General thought otherwise; that before the court met he had besides been indisposed, and had obtained the certificate of his physician that he could not attend that court.

Mr. Burr. Are you still Secretary of the Orleans Territory?

A. I am not.

Q. Do you now hold any office under the Government, and what is it?

A. I am chief clerk in the office of Secretary of State.

Q. Was there any arrangement made to seize Colonel Burr after their judicial proceedings against him?

A. Governor Williams and myself both agreed that his trial in the Mississippi Territory was a mere farce, and that something ought to be done. He proposed to see Colonel Burr, and make some arrangements with him to come on to the city of Washington for his trial. Colonel Burr informed him that he was merely going to ride to Colonel Osborne's for that night. Governor Williams informed me that he received a great coat at the suburbs of the town, and disappeared.

Mr. Wirt. Was not Colonel Burr held in recognisance?

A. Yes.

Q. Did you see such a recognisance?

A. Yes; I saw it myself in the clerk's office.

Mr. Burr. If it is there, I pronounce it to be a forgery.

Mr. Hay observed that the truth would appear in time.

Mr. Hay. Were any legal proceedings pending at the time of his departure?

The witness asked the court if this was a proper question?

Chief Justice. It is a mere difference of opinion about a fact.

Colonel Burr contended that this recognisance had been complied with. [Governor Williams says not.]

Mr. Hay. Was his departure from Washington sudden?

A. It was certainly sudden, as Governor Williams told me he had been promised with a call from Colonel Burr.

FRIDAY, *September* 25, 1806.

Mr. John Graham was again called in at the request of the accused.

Mr. Wickham. You stated something about a communication from Mr. Blannerhasset, respecting Mr. Bradford?

A. I stated that Mr. Bradford was the person who (according to Mr. Blannerhasset) had given him the information respecting the Mexican association at New Orleans.

Mr. Burr. Do you know whether it was the practice then to seize on individuals by military authority?

A. I recollect to have been at Natchez, when about sixty persons were arrested on the suspicion of being concerned with you.

Q. I do not mean so late a period as that. As you were appointed to an office under the Government, I wish to know whether you, as an agent of Government, would countenance military arrests?

A. I certainly would not.

TUESDAY, *September* 29.

The examination of the witnesses was resumed on the part of the United States, although Colonel Burr was still unable to attend on account of his indisposition.

Mr. Graham observed, that when he was before the court the other day, he had omitted, he believed, to detail a part of a conversation which he had with Mr. Blannerhasset. He was also apprehensive that he had not been so explicit in relation to his conversation with General Nevill as he could have wished. He, therefore, requested permission of the court to add a few observations, by way of explanation.

He said that Blannerhasset observed, in the course of their conversation, that both Colonel Burr and himself believed that the people of the Western country would be benefitted by a separation of the Union; but they had found that they were not ripe for the measure; and as they had no personal views, they were not disposed to hasten the event. I understood him to mean that the people of the Western country were not ripe for the measure. I think Mr. Blannerhasset went on to say that this was an event that must happen; but of this I am not so certain. This conversation took place at Marietta.

Mr. Hay. At what period of the conversation?

A. At the first conversation. Indeed I had but one conversation with him; our subsequent interviews and conversations were merely casual.

Mr. Hay. Was it at the first part of your conversation with him?

A. No: Towards the close; and after I had informed him that I was an accredited agent of the Government.

I have some reason to believe that I may have been misunderstood with respect to what I said

relative to General Nevill. Colonel Burr had asked before what conversation I had about a gentleman in the neighborhood of Pittsburg, before the grand jury, without mentioning his name. The allusion was understood to be to General Nevill; and whenever I mention the name of a gentleman, it is my wish to state every circumstance which occurred as nearly as possible. My recollection of the conversation with General Nevill is this: After detailing the conversations which he had had with others, he said that there had been strong prejudice against Colonel Burr about Pittsburg; that the people there were attached to the Union, and believed that Colonel Burr had intended to separate it. Afterwards, he said there was reason to believe that the expedition was meditated against the Spaniards, and his visits might be more welcome.

[From the rapidity of Mr. Graham's pronunciation, it was impossible for us* not to commit some inaccuracies in the report of his testimony. Mr. Graham's absence prevented us from having the opportunity of correcting it before it was published. The two following errors occur in the statement of his opinion as to the Washita land:

Mr. Graham did not tell Mr. Blannerhasset that Colonel Burr would have no title under Bastrop's grant. He hazarded a doubt, or gave an opinion on that subject, for which he assigned his reasons; among these, that Colonel Lynch (under whom he understood Colonel Burr claimed) had purchased a part of this grant from Mr. Edward Livingston; that he had not complied with the conditions of the contract; and that it had been set aside by a decree of the Supreme Court of the Orleans Territory. From the manner in which this circumstance is reported in the Enquirer, it might be supposed that Colonel Lynch had no claim to any part of this grant, save what he derived from Mr. Livingston; an idea which Mr. Graham never meant to convey to Mr. Blannerhasset or any other person; for he expressly told Mr. Blannerhasset that Colonel Lynch had a claim to a part of this grant, which he derived from another source. Mr. Graham mentioned the purchase from Mr. Livingston, because he was under the impression that Colonel Lynch had sold his whole interest in this grant to Colonel Burr.

When Mr. Graham was asked as to the character of this land, he answered, that those who were interested in it said it was very good; those who were not, said that some of it was fine land, but that a great part of the grant was covered with water. Mr. Graham did not mean to say, as it is stated in the Enquirer, that the "greater part" was in that situation.]

Evidence of John G. Henderson.

THURSDAY, *September* 24.

I rode with Mr. Blannerhasset and his wife to my brother's house on the second Monday in September last. When we got near to my brother's, Mr. Blannerhasset introduced the subject of the separation of the Union. He stated, I think, that it was to be conducted under the auspices of Colonel Burr. He mentioned that there were many eminent characters in the Eastern and Western States concerned. He mentioned the names of General Eaton and Mr. John Graham, perhaps others at that time; I do not recollect. I do not believe that anything more passed between us till we arrived at my brother's; when we got to my brother's, we took some refreshment (dinner.) I was not much in company with Mr. Blannerhasset till dinner, and I do not know whether his conversation led to that subject or not. After dinner we walked into the meadow; my brother, Mr. Blannerhasset, and myself. The subject was then renewed, under injunctions of secrecy, which we agreed to observe: Mr. Blannerhasset observed that it was a subject of great importance. He stated that the object was the separation of the Union; he mentioned characters who were concerned in it; observed that Colonel Burr was at the head of it, or words to that effect. He spoke very much in praise of Colonel Burr; mentioned an instance of his goodness of heart with respect to the Manhattan Company, and making the fortunes of many without benefitting himself. General Eaton's and Mr. Graham's names were again mentioned as concerned, and a number of others whom I do not recollect, that were acquainted with it; among the rest was Mr. Harper, and Mr. Alston's name was mentioned as being highly pleased with the scheme. In the course of conversation, Mr. Blannerhasset observed that New Orleans would be seized. He mentioned that the park of French artillery at New Orleans, which Mr. Jefferson was too economical to purchase, was to be procured; whether seized, or obtained in any other way, I do not recollect. He stated that the people in the lower country were displeased with the present Government on account of their interests not being protected or attended to. He seemed to apprehend no opposition in that quarter. He said the attempt would be made in less than nine months; that he himself had embarked in it. He observed that it would be a favorable juncture for effecting the object, owing to a want of energy in the administration; I am not, however, certain whether he, or which of us, made the observation; we all three concurred in it. I think Mr. Blannerhasset observed, that he hoped he should see my brother at the head of a regiment of horse at some time, but I do not recollect. He seemed anxious for us to join. Some time in the course of conversation, the name of Mr. Granger was mentioned; I thought in a threatening style, as if he would have cause to repent his having made use of an expression some time before published, importing that danger was threatening in the West. I do not know whether my brother was present during this observation. Mr. Blannerhasset said, that we must take an active part one way or the other, as we could not remain neutral. He mentioned an expression of Colonel Burr's, respecting the people in the city, or the administration, that if they were

* By *us*, it is meant the Richmond Enquirer, from which journal this report is principally copied.

any wise impertinent, he would tie them neck and heels, and throw them into the Potomac.

Mr. Hay. Did I understand you to say that this was an expression as quoted from Colonel Burr.

Answer. Yes. We desired Mr. Blannerhasset, just before he left my brother's, not to consider us as committed; that it was a subject which required reflection; and that we must consult our friends on this side the mountains, who were interested in that country. I mentioned it to my father, under the same injunctions on which I had received it from Mr. Blannerhasset. I recollect having asked Mr. Blannerhasset, when he spoke of the leading characters of the Union, whether John Randolph had been made acquainted with it. He answered no.

Mr. Wirt. Why did you put that question?

A. Because Mr. Blannerhasset had said that the leading characters of the country were concerned. I asked Mr. Blannerhasset what kind of a Government he would establish in the Western country. He said that this was not yet determined, but that a more energetic one than the present would be adopted. I asked Mr. Blannerhasset, also, if any foreign Power was concerned., He assured me there was not.

Mr. Hay. You asked him what form of Government was to be established?

A. Yes.

Q. Where did you suppose the seat of this energetic Government was to be?

A. He did not mention, but I supposed it was some central place.

Mr. McRae. Did he mention the line of division?

A. He did not particularly, but he said that the people in the South Branch would be in an awkward situation.

Q. Did he mention the Allegany?

A. I do not recollect.

Q. Did he mention any thing about commanding the passes of the Allegany?

A. Yes. He said that, with a few cannon and a few sharpshooters, he could defend any pass in the Allegany.

Q. Did he mention the "Querist" in your presence?

A. He did.

Q. What did he say of it?

Answer. He read one number of it. The first words in it were, "Universal history everywhere teaches or informs," or some such expressions.

Question. Did you remember what was the object of these pieces?

Answer. I understood that it was to promote the separation of the Union.

Mr. McRae. Do you recollect any observations about Blannerhasset's property?

Answer. I think he estimated his property on the island at $50,000; and besides, he had a small fund in Europe, which he said would be safe. He said they could not touch that.

Mr. McRae. What did he mean by "they?"

Answer. I do not know his allusion; but I suppose he meant the Government.

Mr. Wirt. Do you recollect any observation about the expense of supporting Government?

Answer. He said that we were contributing three or four millions to the present Government, when one hundred thousand would be sufficient for a Government of our own.

Witness. I have omitted to state that, after my brother received his last letter from Mr. Blannerhasset, my brother and myself went down to inform him of our decided opposition to this plan. He and Mr. Alston were gone down the river, and we directed the overseer to inform Mrs. Blannerhasset of our intentions. There was a subsequent meeting of the people of Wood county on this subject, and resolutions were adopted in opposition to the scheme; and a month afterwards, the militia volunteered their services to suppress it. Shortly after I left that country for Dumfries.

Cross-examined.

Mr. Wickham. Was this conversation in earnest or jocular?

A. Perfectly serious.

Q. Did you hold any conversations with Mr. Blannerhasset before this which led to it? Were you in the habit of expressing opinions adverse to the Union?

A. I never was opposed to the Union.

Q. Is it talked of in that country?

A. It has been talked of as an event that would take place in half a century or a century.

Q. Was your deposition ever taken?

A. It never was.

Q. At whose instance did the meeting of the people you spoke of take place?

A. Several of us called it, and, among the rest, my brother and myself.

Q. And they passed resolutions about this plan?

A. They did.

Q. How were they informed of this scheme?

A. From reports in the county.

Q. Did you communicate any information to this meeting?

A. No; nor my brother; anything but general observations.

Q. What was the purport of these resolutions?

A. Nothing but to prepare for the danger which was to be apprehended. One of the resolutions alluded particularly to Colonel Burr.

Q. Was Mr. Blannerhassett's name ever mentioned?

A. A proposition was made to insert Mr. Blannerhasset's name in one of the resolutions; but I opposed it.

Q. Did you communicate on this subject with Mr. Graham?

A. I had left the county at that time.

Mr. Martin. What were your politics?

A. They were federal, and are so still.

Mr. McRae. What have you considered Mr. Blannerhasset's politics to be?

A. Democratic.

Chief Justice. Did you understand that this separation was to be effected by political means, quietly, or by force?

A. I understood him to mean, that if the lower

country was in their possession, it would bring the upper country along with it.

Mr. McRae. And he conceived the lower country to be dissatisfied with the Government?

Answer. He did.

Mr. Wirt. Did Mr. Blannerhasset state the manner in which this revolution was to be brought about?

A. No; he did not.

Q. Did the meeting in Wood county arise from any of Mr. Blannerhasset's declarations, or from the movements on the Ohio?

A. I suspect the last.

Mr. Blannerhasset. What movements?

A. I did not myself use that word. I alluded to the building of the boats and kiln-drying meal, &c.

Mr. John Henderson returned to supply an omission in his evidence: that Blannerhasset informed him, that the officers of the Army and Navy were disgusted with the Administration, and disposed to join. Mr. Blannerhasset also mentioned, in the course of the day, that General Moreau was expected to reside near Pittsburg.

SATURDAY, *September* 26.

Mr. John G. Henderson wished to correct an error in his evidence, with respect to the time of the second meeting of the people in Wood county. The first meeting was on a Monday, and the second on the Saturday following.

Evidence of Charles Duval.

THURSDAY, *September* 24.

Two years ago I saw Mr. Burr in New Orleans, but never since; but I have had frequent communications with Mr. Blannerhasset. The first time I ever had any was at Marietta, in September, 1806, when I had flour to sell. I asked him whether he did not want to buy flour, and he engaged twenty barrels; he did not, however, receive more than five or six barrels of it. I mentioned to him that I had understood from Mrs. Blannerhasset that he was going down the river, and a number of my acquaintances were going with him, and that I did not know but that I too would go, if I knew what he was going for. He told me that Colonel Burr, and himself, and others, had purchased large tracts of land, and wanted settlers to go on it. I told him I had land enough at home, and that I did not want to go to settle land. He then represented it as though there was something else in view; but he did not tell me at that time. He said that a number of people were going who had never asked what they were going for; they believed it to be something worth going for. They were leaving their plantations, their neighbors, everything. He said if he was going to leave his, I might surely leave mine; and that I might suppose it was for something very handsome. I mentioned something about his leaving his own plantation; a man who was so well situated as he was. He said that what he had there he did not regard as a straw, in comparison of the object which he had ahead. I had a great many interviews with him on the subject; sometimes he told me one thing, and sometimes another. I told him that Mrs. Blannerhasset had informed me that Mr. Graham was one of the party. Mr. Blennerhasset agreed that it was so. The court will be pleased to notice that Mr. Graham and myself had once travelled to New Orleans together. He mentioned, if I would go with him, could I arm myself with a gun? I told him I had a rifle that I could take with me; that I never had used a musket. He said that that would answer. He asked me if the young men on the Muskingum, who were like to go with me, had arms or could get them? I told him it was probable they all had arms, as they belonged to the militia. He said, if they would find arms, he would find ammunition. Just before Mr. Blannerhasset's boats went off, Mr. Graham came to Marietta, and Mr. Blannerhasset was that night at my father's house. My father told me that my old friend, Mr. Graham, was in town; and Mr. Blannerhasset told my mother that she had better not let me go to to see Mr. Graham, for Mr. G. would certainly persuade me to go down the river.

Mr. Hay. Will you state the different objects which Mr. Blannerhasset held out to you?

A. He mentioned to me that he was going out into the Spanish territory, about the same time that he spoke of my arming; and said he supposed we should have a little fighting to do; but the Spaniards were cowards, and would soon run.

Mr. Hay. Did you understand where you were to fight the Spaniards?

A. Somewhere about the Washita lands; that they might be troublesome, and that he wanted men of my description to do it.

Mr. Hay. Did he profess any other object?

A. My father asked him what he wanted me for; if to work, that I would not work at home. He said he did not want all to work. He wanted men of my description; he did not care if he had one thousand such.

When he was bringing up this kiln-dried meal, I asked him what it was for; he said that it was to take down the river. I asked him why he did not get flour. Because, he said, they were going into the Spanish country, and flour would not keep as well. He told me he wanted us to get knapsacks to carry eight or ten days' provision for marching. I mentioned that I was a poor traveller, and I would get me a Spanish horse and ride. He said he was going out among the Spaniards, an ignorant set of men, and he wanted clever young men to go and take command of them; to have a commission and some office too. I mentioned to him that I would not hesitate to go there and stay two or three years, if I could make my fortune. He said, if I once got there, he'd warrant I never would return, I would be so fond of the place. I told him I never wished to go to a place whence I could not return to visit my friends. He said I should like the country so well, that I would be contented to stay there. He told me that when we got to the mouth of Cumberland river we should be joined by Colonel Burr and the whole party, when the whole secret would be

divulged; and if I did not like it, he would bear my expenses back to Marietta. I told him that if I went down, and a number of my friends were going also, I should like to have choice of my boat's crew. He said if it was so, I must still expect to be under the same regulations as regular troops; that was, that we might have the privilege of choosing our own officers, till we got to the mouth of Cumberland; there we were to meet Colonel Burr; and we must then submit to such regulations as Colonel Burr thought proper. My motive for making this proposition as to my friends was, that a number of strangers were going, and I did not wish to be with them. I recollect nothing further of any great importance.

Mr. Duval's further examination was postponed, and the court adjourned till to-morrow.

Continuation of Charles Duval's testimony.

FRIDAY, *September* 25.

Mr. Hay. Do you recollect any conversation with Mr. Blannerhasset about the temper of the people of New Orleans?

A. Mr. Blannerhasset told me that the citizens were dissatisfied with the Government under which they lived, and with Governor Claiborne; and that he would go to the Spanish country, and there establish a government independent of the government at New Orleans. He mentioned, at the same time, that Mr. Graham was much beloved by the people and party there. I observed to him that when I was in that country, I frequently heard the people talking against Governor Claiborne.

Q. Did he mention a particular time for the execution of this project?

A. He mentioned that he was to be at New Orleans by Christmas.

Q. Do you recollect of General Tupper's saying anything about Allbright (a witness for United States) after Tupper returned home?

A. I did not hear him; but I heard people say that Tupper had declared Allbright had perjured himself, and he would make it appear.

Q. Did you know Allbright, and what was his character?

A. I was at Bellepré a few days before I left home; and the people said that Allbright was an honest, industrious Dutchman, and they would take his word as soon as General Tupper's.

Mr. Wickham objected to these inquiries. Why were they not made when General Tupper was here?

Mr. Hay. It is a great pity, indeed, that he did not wait this investigation.

Mr. Wickham. He did wait six months.

Mr. Hay. Had you any particular communications with Mr. Blannerhasset about your going with him to New Orleans?

A. He told me that I might go to New Orleans with him, and if, when I got there, I did not like the place, I might see Mr. Graham, who was a particular friend of mine, and he would, no doubt, put me into some business.

Q. Was this before or after you understood that Mr. Graham was not of the party?

A. It was after. Mr. G. advised me to have nothing to say to this project; and that if I wanted to go down the river, it would be more to my credit to go any other way.

Q. Do you know anything of the kiln-dried meal?

A. I do; it was ground and stored at my father's mill; about sixty barrels were of kiln-dried meal, and twenty or thirty that were not kiln-dried. The boats dropped down and took in the meal.

Q. Where is your father's mill?—on the Muskingum?

Answer. It is.

Q. Do you say that Blannerhasset's boats dropped down and took in the meal?

A. I do.

Q. What boats?

A. Those which were built by Colonel Barker up the Muskingum. Ten of these boats were finished. They dropped down to the mill about half way to Marietta, took in the meal, and stopped at Marietta.

Mr. Hay. Were any uncommon exertions made to finish the boats by a certain time?

A. Mr. Blannerhasset said if the boats were not all done by a particular time, he would take those that were finished, and leave the rest; and Colonel Barker got all the hands he could.

Q. And were any additional hands employed for completing the boats within the short time prescribed by Mr. Blannerhasset?

A. There were.

Cross-examined.

Mr. Wickham. Did Mr. Blannerhasset say anything to you of a war with Spain?

A. Yes; he mentioned to me, I think, that he expected there would be one.

Q. And was it pretty generally expected in that part of the country?

A. I believe it was.

Q. Was it generally wished for?

A. I think not.

Q. Have you made any other affidavit than in this court?

A. None.

Q. Did you give no information to Governor Tiffin?

A. None.

Q. What has become of the boats and kiln-dried meal?

A. Eaten up, I suppose, by this time.

Mr. Martin. What! the boats too? Who took this meal?

A. It was taken by General Buel, and, as it was said, under the orders of the Government.

Q. What became of the boats?

A. They were taken to a creek at Marietta. Some were sunk, some were broken to pieces, and others were fitted up to carry away troops of the United States.

Mr. Burr. Were these troops taken up the Mississippi above its junction with the Ohio?

A. So I heard.

Q. To St. Louis? A. I heard so.

David C. Wallace sworn.—In the Fall of 1806, Mr. Blannerhasset informed me that he was engaged in a plan with a number of persons, which he thought would be highly advantageous, and that he was authorized to offer me the appointment of surgeon-general; I inquired, surgeon-general of what? and he replied, that he was not at liberty to explain, until I had engaged in the expedition; he used various arguments to induce me to join; he said that I should be in very excellent company; that the association would consist of respectable individuals, and particularized Colonel B.; he thought that after so long an intimacy I might rely on his friendship. The conversation ended with my peremptory refusal to join in any expedition, the nature and plan of which I was not fully informed of, and approved. I heard Mr. Blannerhasset make proposals to several individuals to join; offering one hundred acres of land, each man to furnish himself with a rifle and blanket; he stated that when they got to the mouth of Cumberland the plan was to be disclosed; all those who did not like it were at liberty to return; some of the men engaged, others took time to consider the proposition fully. At this time the boats building up the Muskingum were nearly completed, and a general rumor prevailed that Burr, Blannerhasset, and Co., were preparing an expedition to dissever the States, and to carry war into Mexico. When Mr. Blannerhasset again asked me to join, I replied that the same objections continued, and that I was not yet informed of the objects of the expedition; to which he replied, "You have heard what we were about;" which I understood as assenting to the truth of these reports. I told Mr. Blannerhasset that I expected they would be stopped descending the river: to which he replied, that he did not believe the country would be able to stop them; that he would have five hundred men from Marietta: he would have seven boats at that place, and they would be joined by others from above. I remarked that the people in the Western country were excellent marksmen, and that the woods on the banks of the river would afford them an excellent covering for firing upon those who were descending the river. He replied that, "in that case we would land a party, and set fire to every house and town." I rode with Mr. Blannerhasset to see the boats that were building up the Miskungum, where he showed the builder of the boats and myself the articles by which the people under his command, as he called them, were to be governed on descending the river. Each boat's crew was to choose the captain, until they joined Colonel Burr at the mouth of Cumberland, where he was to direct their proceedings. At the boat yard he directed the builder to have an apartment fitted up in his boat for Colonel Burr, as he expected the Colonel, when he joined him at the mouth of Cumberland, would sometimes wish to stay with him I observed to Mr. Blannerhasset that I did not believe the plan would succeed, as the people generally detested and execrated the plan. To which he replied, "if the people could not see their interest, we will not cram the measure down their throats." Mr. Blannerhasset showed me some letters he had received from Colonel Burr about this period—[Mr. Wirt. At what time was it? A. Between September and the time of going down the river,]—in one of which he admonished him not to be alarmed by the remarks respecting his arrest in Kentucky, as he apprehended no danger but delay to retard the intended settlement on the Washita. A person present (Captain Elliot) inquired whether Colonel Burr had mentioned anything about the expedition; to which he replied, "No; nothing comes to us on that subject by mail." Mr. Blannerhasset spoke to me to furnish them a quantity of medicines, and such directions for using them, as were calculated for a military expedition.

In a conversation with Colonel Burr in 1805, he expatiated upon the situation of the Western country; on its being compelled to pay large sums for the sale of lands which were spent in the Atlantic States, and the $3,000,000 which he said we paid for tax. These observations made by Colonel Burr induced me to believe—

Mr. Botts objected to the witness stating any of his own inferences.

Witness. Colonel Burr observed that this same money would vastly improve the commerce of the Western country.

Mr. Hay. Did you ever read the Querist?

A. I read the first and second numbers at Cincinnati.

Q. Did the observations in these papers recall to your recollection your conversation with Mr. Burr?

A. They did. When I saw these papers, I was asked my opinion about the author; I said that in my opinion Colonel Burr had suggested the ideas, and that Mr. Blannerhasset had put them into words.

Q. Were the rumors that you spoke of general?

A. They were so. They were in every man's mouth.

Cross-examined.

Mr. Wickham. Have you had a medical education?

A. Yes; I received it in the University of Pennsylvania.

Q. Had you ever performed any surgical operation?

A. I had not. I never practised physic, nor did I ever intend it.

Q. Was this conversation with Mr. Blannerhasset after or before your refusal to join?

A. All the conversations were after that.

Q. Did any of the men applied to by Mr. Blannerhasset in your presence go?

A. I do not know.

Q. What was the tenor of these rumors?

A. That this party intended to effect a separation of the Union, and to carry an expedition into Mexico.

Q. When the offer of surgeon general was made to you, did you believe it to be serious?

A. I cannot be certain of Mr. Blannerhasset's motive for making this proposition, but supposed

that his object was to induce me to join, although I had not practised physic.

Mr. Martin. Were you in the habit of curing gun-shot wounds, or cutting off limbs?

A. No, sir, nor did I wish it.

Mr. Wickham. When were you in Philadelphia?

A. In 1790 and 1800.

Q. Whose lectures did you attend?

A. I attended Dr. Woodhouse's, Rush's, Wistar's, and Barton's. Wistar was joint professor of anatomy and surgery with Shippen.

Q. Did you attend all the lectures?

A. Yes, sir.

Mr. Hay. How long were you engaged in the study of medicine?

A. Seven years.

Mr. Hay. Did Mr. Blannerhasset know of this?

A. He did.

Mr. Wirt. Did you attend any surgical operations in the hospital? A. I did, one winter.

Mr. Wickham. With whom did you study?

A. I studied obout three years with Dr. White of Philadelphia.

Mr. Hay. Was this the same as Dr. White of Baltimore? "No." said Mr. Martin; "he was then in Ireland."

Witness. What, Dr. White of Philadelphia?

Mr. Martin. Oh! no; Mr. Hay and myself *understand* each other.

Evidence of Robert Wallace.

FRIDAY, *September* 25.

Q. Where do you live?

A. I live in Marietta.

Some time last fall, I received a message from Mr. Blannerhasset to come down to the island. I went; it was soon after Mr. Blannerhasset returned from Kentucky. After I had been there some time, Mr Blannerhasset took me into a small room, and said he wished to speak to me privately. He then asked me if I had not heard that he was going down the river; I told him that I had; he asked me if I would go with him. He said he was not at liberty to reveal the object entirely, but if I would depend on his friendship he would do well for me. He spoke of the settlement of the Washita land, but intimated that there was something else in view. On the same evening there were several young men at Mr. Blannerhasset's house from Bellepré; they were all requested to join the expedition and go down with him; they were all to furnish themselves with a rifle and blanket. The next morning I had some more conversation with Mr. and Mrs. Blannerhasset. Among other things, I asked whether Government countenanced this expedition; I had heard something from Captain Elliot, the evening before, that this was an expedition intended against Mexico. Mr. Blannerhasset replied that it was immaterial whether Government aided it or not; Government was weak; they would have nothing to do with Government, unless it opposed the expedition; in that case, they would make resistance. Mr. Blannerhasset laughed at my staying at home and spending my life in obscurity behind the counter; it was a dull life; he told me if I would go with him, I would have an opportunity to distinguish myself. On the next day I rode up to Marietta with Mr. Blannerhasset, and on the way he was engaging several young men to go down the river with him, offering them lands; among the rest was one Rattburn, a schoolmaster; I told him he was a drunkard, and could do nothing towards the settlement of lands. "No matter," said Mr. Blannerhasset; "when he is brought under good discipline, he will make a good soldier, and his allowance will not be large enough to make him drunk." Mr. Blannerhasset was then going up the Muskingum, to see after Colonel Burr's boats that were building there, and to hurry their finishing.

Mr. Blannerhasset was at my father's house afterwards, and I was in the room when he offered my brother the place of surgeon general. My father told Mr. Blannerhasset, he had better give up the enterprise, and stay at home on his island; that it was impossible he could succeed; that his force was too small, and the opposition too great. Mr. Blannerhasset said that General Wilkinson and the army would join him. When I was at the island, Mr. Blannerhasset told me that he expected that we should have a little fighting with the Spaniards, but that they were great cowards, and would soon run and leave everything in our possession. In the month of August, Mr. Blannerhasset was at my father's house and used many arguments to prove that it was the interest of the Western States to separate themselves from the Union.

Mr. Wirt. Did Blannerhasset speak of Burr?

A. Yes, I understood that he spoke of him as the leader; I recollect to have asked him whether Colonel Burr was concerned. He answered, that he was one of the leaders. He also mentioned General Eaton as one concerned.

Mr. Hay. Did he mention what would be the result to you and to himself if the enterprise should succeed?

A. He said, if we succeeded, that our fortunes would be made; if not, that he was a ruined man.

Q. Did he say what he would do in case he met with resistance in his descent down the river?

A. Mr. Blannerhasset said they could land and burn the houses and towns, if the people attempted to oppose them.

Q. What arms did you see on the island?

A. I saw two or three guns, three blunderbusses, three braces of pistols, a sword and dirk, a keg of powder, and some bullets.

Mr. Martin. Were these arms owned by Mr. Blannerhasset for any long time?

A. Yes: I had seen them some time before.

Cross-examined.

Mr. Wickham. Did you ever agree to go with Mr. Blannerhasset?

A. I was undertermined if I should go; I said I was willing to go with my father's consent. Mr. Blannerhasset also said that he had so much respect for my father as not to wish me to go without it.

Q. Was there any talk of a Spanish war?

A. Mr. Blannerhasset gave some hints of such an event.

Mr. D. Woodbridge came into court to explain an observation which had been used on a former occasion. He said that the partnership accounts between him and Mr. Blannerhasset had been settled; from which it might be inferred that all their accounts had been settled. The truth, however, was, that though their partnership was dissolved, their private accounts were not yet adjusted.

Return J. Meigs, jr., was then introduced; he inquired whether he should state anything about the seizing of the boats.

Mr. Hay. No, sir; I wish you to state particularly what passed between General Tupper and yourself.

Mr. Burr. And what is that inquiry to the court?

Mr. Wirt. It is to fortify Jacob Allbright's testimony. I presume that such will be the conclusion, if it appears that General Tupper has told Mr. Meigs the very things which Allbright has substantially related.

Mr. Hay. Has not General Tupper left his affidavit?

Mr. Wickham. I know not; but when that shall be produced to the court, it will be time enough to introduce Mr. Meigs.

Mr. Hay. We have Mr. Meigs' affidavit, and, if it be necessary, we will introduce it. Mr. Meigs was then discharged from further attendance.

David Gillmore sworn

Mr. Blannerhasset was in Marietta at the latter end of October, with General Tupper. Mr. Blannerhasset asked me if I was the person who gave tuition in Marietta. After a short introduction, he observed that he was about to descend the Ohio and go up the Red river, to make a settlement; that he supposed the accumulations I might make from my instructions were not adequate to what I might make with him. He would like to have me go with him; that he was going to settle a new country, which would be advantageous to those who would volunteer to go round to that settlement. He mentioned the fertility of the country—the advantages of a market that was near to it, not far from New Orleans. He thought the prospects were so promising and flattering that I could not hesitate a moment in determining in favor of going. I said, if I knew the object, and was certain of benefitting myself, I would have no objections to go. He then observed that Mr. Belknap was a fine and promising young man; that he stood high in his estimation, and he would give me the same privileges as Mr. Belknap would derive. That evening he insisted very urgently upon my going down the river with him. I wanted time to consider; but that if he would make any engagements on which I could rely, I was willing to join. I said I would call at his island on the next Saturday. We walked to Mr. Woodbridge's, and he made inquiries if I was acquainted with surveying. I said if I could get anything in that way I would go, but I had heard of other objects being in view.

Mr. Hay. Did you press him to disclose the real objects of this plan?

A. I did. He referred me to Mr. Belknap; and if I concluded to go, he would let me know more when I called on him.

Q. Did you see Mr. Belknap?

A. I did; but I had not time enough to enter into the merits of the cause. Afterwards I visited Mr. Blannerhasset, and he asked me whether I had determined to go down the river. I told him that I had not yet had sufficient time to talk with Mr. Belknap. I asked him what were the prospects, and what were the discoveries of the objects he would make to me, and then I would tell him whether I would go or not. He said that I must engage first, and then he would tell me. Mr. Blannerhasset seemed willing to say very little on the subject, and seemed rather to consider me as a spy. I wanted some assurances, and perhaps intimated that I wanted everything to be put on paper. I told him that I had heard they would bear the expenses of the people back, and I think he said that that would be very unreasonable. I made some inquiries as to their numbers, and he said that some were coming down the river from Pittsburg—enough to furnish crews to the boats that were building on the Muskingum—I think he mentioned two hundred. He mentioned General Eaton as engaged. I asked him whether he expected three or four thousand men down the river. He said he could not tell. I asked him if he expected one thousand. He could not inform me. He observed that it was necessary for every person who descended the river to carry arms. I asked him the reason, and he said that there were a number of Spaniards or Indians on the Red river, who might attack them if they were not armed. He then observed that he would prefer rifles in preference to common fowling-pieces.

Cross-examined.

Q. Did any person go from your part of the country but Mr. Blannerhasset?

A. No one from Marietta.

General William Eaton sworn.

SATURDAY, *September* 26.

Mr. Hay. We only wish that part of your testimony, sir, which you have not yet delivered. You recollect that there was a part of it which was excluded by the decision of the court.

General Eaton. I know nothing concerning Blannerhasset and Smith. I have no recollection that their names were mentioned to me till after the prosecution was commenced. All that I know of Burr's project to dismember the Union is already before the court. After Colonel Burr had expressed to me the intended projects already related, and overcome my objections, he went so far as to assert that he would erect his standard at the seat of Government. Mr. Burr inquired of me, with what officers of the Marine corps and of the Navy I was acquainted. I told him with most of them. It is impossible for me at this period to remember distinctly every adverb expressed to me in the course of conversation; but this I perfectly

recollect, that if he could gain the Marine corps, and secure to his interests the naval commanders, Truxtun, Preble, and Decatur, he would turn Congress neck and heels out of doors, assassinate the President, (or what amounted to that,) and declare himself the protector of an energetic Government. If that distinct expression was not used, (though the impression is strong on my mind that it was used in the course of conversation,) yet he used such expressions as these: "Hang him!"—"throw him into the Potomac!"—"send him to Carter's mountain!" Mr. Burr proposed to me to endeavor to gain the Marine corps, and to sound Preble and Decatur, with whom I had been in habits of intimacy, but I had not been so with Truxtun. A circumstance now occurs to my recollection: he also desired me to gain a Captain Davidson—a very brave man, and who is as honest as he is brave. Mr. Burr seemed to select a Mr. Reynolds—a lieutenant of marines, a handsome and excellent officer—whom he wished to engage. He grew importunate on the subject of the Marine corps, and asked me, with some eagerness, how the Marine corps stood. I answered him, "Make yourself easy, sir; the Marine corps stand as they should stand." Here, I beg leave to observe, that I never felt myself prepared to insult the honor of either of those gentlemen by making such propositions to them; and if I had thought them corruptible, I was not yet prepared. I remonstrated with Colonel Burr on the fallacy of his hopes to engage such men as Truxtun, Preble, and Decatur, in the projects he had conceived—observing that these gentlemen were clothed with well-merited honors, independent in their circumstances, and that such were not the materials for a revolution. This, Mr. Burr admitted, but observed that they were undoubtedly, like others, conscious of the imbecility of the Government, and, like all military men, would prefer (I think that was his expression) a government of more energy, where enterprise would be encouraged and merit duly rewarded.

I stated obstacles to the project then in speculation, such as I thought insurmountable. I asserted that it would be impossible to find a party of men in this country who would support him in projects of such a treasonable, and, I think, I said, murderous nature. He observed that he knew better the dispositions of the principal citizens of the United States than I did. He made reference, I think, to the political divisions of the people. At this distant moment, however, I cannot be positive. I recollect to have mentioned to Colonel Burr that I had lately travelled from one extreme of the Union to the other; and though I found a diversity of political sentiment among the people, they appeared united at the most distant aspect of national danger. He again recurred to the weakness, and want of energy of the Administration, and to his own resources; he seemed to make his project meritorious, as he said the degraded situation of our country required more energy in the Government; he said that the blow must be struck, and if he struck it at that time and place, he would be supported by the best blood of America. I observed that one solitary word would destroy him. He asked me what word. I said, "USURPER." He smiled at my want of confidence, and quoted examples from ancient and modern history, in which, I think, were named Julius Cæsar, Cromwell, and Bonaparte. Much speculative conversation passed, which I cannot distinctly recollect, but which went to convince me of the unprepared state of the people of these United States to defend themselves against an energetic blow; which conversation was pretty much closed by this observation of mine, that, if he should succeed at the seat of Government, his throat would be cut in six weeks by Yankee militia.

Cross-examined.

Mr. Baker. At what time was this conversation held?

Answer. Between the middle of February and the last of March, 1806.

Q. Cannot you come nearer to the time?

A. We had frequent conversations. I received various notes from Colonel Burr, requesting to see me. Our conversations were commonly held at the house of Mr. Wheaton, Sergeant-at-Arms, where Colonel Burr boarded. I frequently dined at that house with gentlemen in Congress, and we sometimes passed an hour or a half before dinner in conversation. We had interviews at other times, when the subject was started.

Mr. Botts. At what particular period was it, sir, that you exclaimed against the views of Colonel Burr?

A. As to the time, I do not recollect.

Q. I mean as to the stage of your communication?

A. It was when he opened his views to me of overturning the Government. But, through the whole of our intercourse, I used such strong expressions of disapprobation against his plans, that Colonel Burr ought to have been satisfied that he had no right to use *my* name.

Q. Was there no particular expression by which you conveyed to him your unwillingness to associate in his plans?

A. I have already stated to the court that my expressions must have convinced Colonel Burr that I was not disposed for the enterprise.

Q. Was there no particular objection you made more distinguished than any other by energy of language?

A. None more so than I have already stated. I did not think it good policy to awaken the suspicions of Colonel Burr.

Q. Do you recollect the time when you threw off the mask?

A. It was when I told him that the people were not prepared for his usurpations; that the very name of *usurper* would put him down; and, although he might calculate on the weakness of some quarters of the Union, yet there was strength in the North, which would cut him off. When Colonel Burr returned to the subject of dismembering the Union, the central project seemed to have been abandoned.

Mr. Wickham. You said that it was not your

policy to be more explicit; will you explain what you meant by that observation?

A. I have already given you an explanation of that before the court and the jury, but I will repeat it. I knew not that Mr. Burr had made communications to any one else; and if I had positively declared that I would oppose him, I doubted whether he would not turn the tables upon me. I had a further view. Had Mr. Burr, by means unknown to me, got his outrage upon the Government into motion, I should have endeavored to have been near him.

Q. Was your conversation about the marine corps before or after throwing off the mask?

A. I think it was previous. My memory, as to time, is not the most accurate. Many things may have escaped my memory; and, as it relates to the question of time, I cannot be positive on the subject.

Mr. Botts. Did you say that your toast was printed in a Springfield paper?

A. I was about to observe, with the permission of the court, on that subject. I never meant to be positive on that point. I am impressed with the opinion that this toast went through the hands of Stephen Pynchon, of Brimfield, and through him to said paper. The toasts have been given to the public, and it is more than possible I gave it more than once.

Q. Who was the printer of the Springfield paper?

A. I do not, at this time, recollect his name, though he is among the number of my friends.

Mr. Wickham. Or the title of the paper?

A. "The Spy."

Mr. Botts. You have detailed a number of harsh expressions which you used to Colonel Burr. Did he keep in perfect good temper all this time?

A. Colonel Burr, sir, has a powerful command of his muscles; I did not find at all times that they were unruffled; I could read in his countenance, sometimes concern, sometimes solicitude, and sometimes a disposition to make a trifle of my objections.

Q. I think you said, that it was generally your purpose not to disclose, in your intercourse with Colonel Burr, that you were inimical to his views?

A. You understood me correctly.

Q. But that, nevertheless, his muscles were sometimes ruffled?

A. They were.

Q. Were your observations, then, of a nature to ruffle him?

A. I spoke to Colonel Burr, sir, with much plainness; and, even if I had been cordial in my approbation of his plans, I should have sounded my objections, that I might have tried his force. I have done the best that I could for my country; I have attempted to exert all my wisdom; it was a painful ground on which I was taken. I took the advice of two intelligent gentlemen, whose names I am at liberty to mention, and they did not think it advisable for me to make a full disclosure to the Government, for my solitary communication would not avail against the weight of Colonel Burr's character; for, with all the evidence even now before the world, I still feel the weight of that character.

Mr. Baker. And who were the gentlemen that advised you?

A. The Honorable Samuel Dana and John Cotton Smith.

Mr. Burr. Had we any conversation before the month of January?

A. It recurs to me as highly probable that I first spoke to you in Philadelphia, between the 20th and 24th of December.

Q. On this subject?

A. I had a communication with another gentleman, at that time, of a very indefinite nature. At Philadelphia you gave me no distinct nor well-digested ideas of the project, but you spoke of a Spanish war.

Mr. Martin. We must have that gentleman's name. Who was it?

A. Jonathan Dayton.

Mr. Burr. Had you any expectations or promises of a military command from Government?

Answer. It is true that the chief clerk in the Department of War, though in confidential terms, asked me whether I would accept a vacant rank of lieutenant colonel on the establishment? I answered that I would take no rank on a peace establishment. There were no other overtures to me on this subject; but, when there was a prospect of war, you, and other men whom I thought as honorably of as I then thought of you, proposed a command to me in case of war. It is true that a gentleman near the Government asked me if I would take a command under the celebrated General Miranda. I asked him if he was authorized by Government to make this proposition? He said, no! I then observed the question required no measure, (as I found that, too, to be a project of darkness.) I was determined to know to what it all tended.

Mr. Baker. Who was that man?

Answer. Dr. William Thornton. I will ask the indulgence of the court to make one observation. It has been asserted by Colonel Burr that it was his intention to disqualify me for the stand which I now occupy; I shall remain here a reasonable time to indulge him in the attempt; it will not avail him. Let him look through all the pages of my life; he may find some errors and extravagances there, but he will find neither felony, nor fraud, nor neglect of duty.

Evidence of General Wilkinson.

SATURDAY, *September* 26.

Mr. Hay. Will you be so good as to state the written communications made to you by Colonel Burr, and the oral communications of Mr. Swartwout?

General Wilkinson. On or about the 8th of October of the last year, (1806,) I was sitting, in the evening, with Colonel Cushing, at his quarters, and with him alone, when a gentleman entered.

Mr. Hay. At what place?

A. At Natchitoches. The gentleman inquired

for Colonel Cushing, who rose and received him; he presented a letter to the Colonel, who broke the seal and read it. The gentleman then announced himself to be the Mr. Swartwout referred to in that letter, and Colonel Cushing introduced him to me as the friend of General Dayton; handing me, at the same time, the letter, a copy of which I have, and the contents of which I well recollect. The General then produced a paper, said to be the deposition of Colonel Cushing, which comprehended this letter.

Mr. Botts. When you are about to show a paper, you will please submit it to our inspection.

General Wilkinson. I shall be governed by the Judge in that respect.

Mr. Botts. Then we shall request the Judge to govern you in that respect.

General Wilkinson. I shall endeavor to conduct myself with propriety, and in the most decorous manner to the court.

[Here General Wilkinson recapitulated the contents of the letter which may be seen in the annexed deposition of Col. Cushing, marked A.]

Mr. Swartwout took a seat, and informed us, that, being on his way down the Mississippi for New Orleans, in company with a Mr. Ogden, they had heard at Fort Adams of the impending operation against the Spaniards, which had induced him to ascend the Red river in order to join me, and volunteer his services in the campaign; and that Mr. Ogden had proceeded on his journey to New Orleans. Colonel Cushing retired a few minutes, and, pending that interval, Mr. Swartwout slipped from his side pocket a letter and packet, or envelope, which he said he was charged by Colonel Burr to deliver to me. I hold the letter in my hand. It is a formal letter of introduction of Mr. Swartwout by Col. Burr.

Mr. Martin observed that, if any letters were produced, they should be lodged with the clerk, where both parties might have an opportunity of inspecting them.

Chief Justice. Not unless they are read. [The letter was laid upon the clerk's table.]

I inquired of Mr. Swartwout where Col. Burr was? He answered that he was in Philadelphia, or that he had left him there. Colonel Cushing returned, and the conversation took a general course. After some time Mr. Swartwout withdrew, and I retired to my chamber, and in the packet or envelope I found a letter addressed to me in cipher from Colonel Burr.

Chief Justice. I did not understand you. How did you get that letter?

A. It was in the packet or envelope. This letter was principally in cipher; the closing paragraph, however, was in the ordinary script. I resorted to the key, and attempted an interpretation of the letter. I did not complete it, but discovered enough in the course of the evening to satisfy me that there was some illicit project on foot. I arose early in the morning and called on Colonel Cushing, my second in command and adjutant and inspector to the army. I stated to him that Mr. Swartwout had borne me a letter from Colonel Burr, the nature of which I explained, and observed to him that Mr. Swartwout's declarations that he had come with a view to volunteer his services against the Spaniard, were merely intended to cover his real design. I then communicated to Colonel Cushing the measures which I should pursue, enjoining on him, at the same time, to observe the strictest secrecy. Were it permissible to be read, here is a statement of facts, sworn to by Colonel Cushing. [The General held, at this time, in his hand, the paper marked A.]

Mr. Wirt. This statement is signed by Colonel Cushing, with a certificate of his qualification, in legal form, annexed.

Mr. Wickham. An affidavit forming no part of the case before the court cannot be introduced.

Mr. Hay. General Wilkinson states that, on the morning after the letter was partly deciphered, he stated to Colonel Cushing its contents, and communicated to him the measures which he should pursue. These are facts detailed in that deposition, and, if the gentlemen do not wish to see them, there is an end of the controversy.

The General proceeded. One paragraph of the letter I have observed was in the ordinary script. [Here the paragraph was read by General Wilkinson in the following words: "He is a man of inviolable honor and perfect discretion; formed to execute rather than to project; capable of relating facts with fidelity, and incapable of relating them otherwise; he is thoroughly informed of the plans and intentions of —— ——, and will disclose to you as far as you inquire, and no farther. He has imbibed a reverence for your character, and may be embarrassed in your presence; put him at ease, and he will satisfy you."] I determined to avail myself of this reference to obtain from Mr. Swartwout that information which I could not discover from the letter—that is, the object to which Colonel Burr expressly directed his views; and, in the course of several days, I obtained from him, substantially, the following facts: That he had left Colonel Burr at Philadelphia, occupied almost day and night on an enterprise which he had in contemplation. That he lived in a retired part of the city, in a small house with several rooms, where he received persons with whom he had to transact business; and that he saw no two persons at the same time. He observed to me that Commodore Truxtun was frequently with him, and zealously engaged in his enterprise. He observed, at the same time, that a man who superintended the public buildings at Washington was also zealously engaged in his enterprise. He did not recollect his name, but on my mentioning the name of Latrobe, he said that was the man. He said that he had been despatched by Colonel Burr from Philadelphia, and had traversed the States of Ohio and Kentucky. I so understood the gentleman at that time, but have since discovered that he descended the river.

Mr. Botts. By whom did you understand that he had descended the river?

A. By a man who informed me he had rowed him down from Pittsburg.

Another reason why I may have been mistaken

was this: he informed me that he had passed to Frankfort in quest of General Adair, for whom he had despatches from Colonel Burr; and, not hearing of him there, had returned back to Lexington in pursuit of him, where he was informed by Major Waggoner that General Adair (being in ill health) had gone to some medical spring, and that, if he would wait a few days, he might see him; that he did so, and thus had an interview with him, without incurring any suspicion; at which time he delivered his despatches. He said General Adair was zealously engaged in the enterprise, and observed, "tell him I will not write to him, but that I expect to meet him at the place; that he may depend I will meet him at the spot;" or words to that effect.

Mr. Swartwout proceeded to inform me that he came to Louisville, and felt himself at a loss how he should reach me with the most certainty; that a rumor had prevailed there that I had descended the river. Finally, on the advice of Mr. Floyd, he determined to go across the country, under an expectation of finding me at St. Louis. Accompanied by Mr. Ogden he prosecuted his journey to Kaskaskias. Finding that I had descended the river, he determined to alter his route; he purchased a skiff, employed hands, and followed me down to Fort Adams. At this point I asked him whether this sudden change of route might not expose him to suspicions? He said that, to guard against this, he had wounded his horse with a penknife, and informed the people that his intentions were to have visited St. Louis; but having experienced this accident, he should pursue his original destination, which was to descend the river to New Orleans. On arriving at Fort Adams, and discovering that I had proceeded to Natchitoches, he determined to follow me; and his friend, Mr. Ogden, (pursuing his route,) went on with despatches from Col. Burr to his friends in New Orleans. Mr. Swartwout informed me that Colonel Burr, supported by a numerous and powerful association, extending from New York to New Orleans, was about to levy an armed force of seven thousand men, with a view to carry an expedition against the Mexican provinces; that five hundred men would descend the Allegany river with Colonel Swartwout and a Major or Colonel Tyler; that the boats were already built. He observed that this Territory would be revolutionized, where the people were ready to join; and that some seizing, he supposed, would be necessary at New Orleans; that they expected to make their embarcation about the first of February; that they proposed landing at La Vera Cruz, and marching from thence to Mexico. I observed to him that there were large sums of money in the Bank of New Orleans. He replied that he knew that full well. I observed, "surely you will not violate private property?" He said, "We mean only to borrow, and will return it;" that they must equip themselves at New Orleans; that naval protection would be had from Great Britain; that Commodore Truxtun and the officers of the navy were so disgusted with the Government, that they were ready to join; and that pilot-boat built schooners were contracted for on the southern coast of the United States for the service.

He inquired of me whether I had heard of Dr. Bollman? and, on my replying in the negative, he expressed some surprise; observed that Dr. Bollman and a Mr. Alexander had been despatched from Philadelphia, by sea, to New Orleans, with despatches from Colonel Burr to me, and that they must have arrived. Mr. Swartwout informed me that he was obliged to go to New Orleans; and was also under engagements to meet Colonel Burr and General Dayton at Nashville on the 20th of November. I think Mr. Swartwout left Natchitoches about the 18th of October for New Orleans, as I understood.

It may be proper, in this stage of my testimony, to say that the envelope, which contained the ciphered letter from Colonel Burr, covered also two other letters. To save misapprehension, it may also be proper to say that, when I speak of an envelope, it is in contradistinction to a sealed packet. It occurs to my recollection that a letter, addressed to John Peters, Esq. of Nashville, was enclosed in the envelope, as well as another letter from General Dayton, in cipher. See [Dayton's letter, note C.]

Mr. Baker. Do you say that the letter from General Dayton was enclosed in another ciphered letter?

A. No. I say expressly the reverse. It came with it.

Mr. Wickham objected to reading the letter from General Dayton. He said that General Dayton being absent, he had no opportunity of consulting him, or of ascertaining his wishes respecting it. If there be no other evidence that the letter was from General Dayton except that a letter was received by General Wilkinson, purporting to be a letter of General Dayton's, it was not evidence.

Mr. Hay. The fact stated by General Wilkinson is, that he received this letter. It may have had a considerable influence with him, as to the course which he pursued. He received the letter, together with another ciphered letter from Colonel Burr; and the fact being that he received this letter, purporting to be a letter from General Dayton, it surely may be read.

Mr. Wickham. If the letter by itself would not be evidence, its being connected with others would not make it so.

Mr. Hay. On that distinction I mean to offer it. If General Dayton were before the court, he might require some other evidence as to the authenticity of the letter. General Wilkinson is telling his whole story; he is to give his whole narrative; and all the circumstances will bear upon each other.

The Chief Justice at first said that, if General Wilkinson could say that the letter influenced his conduct, it might be read; but, finally, he observed that, on a motion now before the court, it might be improper to read it. If it be the intention of General Wilkinson to state that certain conduct of his was produced by that letter, he may state that such conduct was produced.

General Wilkinson. I must say this letter materially influenced the measures which I pursued.

Mr. Hay. There is certainly a wide difference between this case, a mere examination before a judge, and a trial before a jury. This letter may identify General Dayton with the meeting at the mouth of Cumberland.

General Wilkinson. Here is the letter, addressed to J. Peters, Esq., signed A. Stephens. It appeared to be in a disguised hand; but I have no doubt of its being the handwriting of Colonel Burr. [See note D.]

I returned from the operations against the Spaniards November, 5th and on the next morning—

Chief Justice. To what place did you return?

A. To Natchitoches.

On the morning of the 6th of November, a small Frenchman (whom I had never seen before, nor have I ever seen him since) presented a packet to me, and took his leave. This I found to be a letter from Dr. Bollman, covering a letter from Colonel Burr. The letter from Dr. Bollman, in his proper handwriting, bears date September 27, 1806, from New Orleans. [See note *.*] Here is the ciphered letter enclosed by Dr. Bollman, and I find it is an exact duplicate, as it professes to be, of the one received by Mr. Swartwout, with this variation: "Dr. Bollman, equally confidential, better informed on the subject, and more intelligent, will hand this duplicate." [This letter was laid upon the clerk's table.] That letter also enclosed one from General Dayton.

Mr. McRae. Of the same tenor as the former?

A. No; quite different.

This letter of General Dayton is partly in cipher, and partly in the common script. [See note E.]

Mr. Wirt. Are you acquainted with General Dayton's handwriting?

A. Perfectly.

Mr. Hay. How did you become acquainted with it?

A. From a long and familiar correspondence. Here is a letter from General Dayton to me, introducing his son, which will show the similarity of the handwriting. [Here the General produced the letter of introduction.] On the same morning I received the following information from Natchez, in a letter from James L. Donaldson, dated the 30th of November, 1807: [Here General Wilkinson offered to read the letter, but it was rejected by the court.—See note F.] In consequence of this letter from Mr. Donaldson, and my reflections on the letters from Colonel Burr, I determined to concentrate my whole force at New Orleans as soon as possible. [Mr. Hay said that he was willing, in order to save time, to waive everything which related to the operations of the Army; and requested that General Wilkinson would proceed to relate what occurred at New Orleans.] I proceeded from Natchitoches to Natchez, and, descending from that place, reached Fort Adams on the 18th of November, where I found Mr. Swartwout, who had been taken ill on his route from Natchitoches to New Orleans, and, for his accommodation, was invited by some one of the officers to that place. He informed me that Mr. Ogden had reached that place on his way to Tennessee; but, being alarmed by the rumors which prevailed in that part of the country, he was afraid to proceed, and had halted there. I inquired of Mr. Swartwout whether Mr. Ogden had borne any letters. He said that he had not; but that Lieutenant Spence, of the Navy, had been sent, some time before, from New Orleans through the country, with letters from Colonel Burr. I proceeded on, and reached New Orleans on the 25th of November, in the evening; and on the 26th, in the morning, I received this letter from Dr. Bollman: [Here General Wilkinson produced the letter.—See note G.] This letter reminds me of a circumstance which I had omitted. The morning after I had received the letter of Doctor Bollman at Natchitoches, I acknowledged the receipt of it in a short note, and informed him that I should be in New Orleans about the 20th. I did not call on Doctor Bollman till the 30th. After the ordinary salutations, I inquired whether he had heard of Colonel Burr since his arrival. He informed me that he had not. I asked him whether he had heard of Lieutenant Spence's arrival in Tennessee. He inquired how I came to know anything of Lieutenant Spence. I informed him that it was through Mr. Swartwout. He assured me that he had sent despatches for Colonel Burr by Lieutenant Spence, and that he had heard of his arrival at Nashville. He then inquired what part I meant to take. I observed that I felt myself delicately situated. It was impossible that I could take any part while I held my commission, and I was so circumstanced that I could not get rid of it. He asked me what I thought of the competency of the force for the undertaking. I observed that it depended upon a variety of circumstances, such as winds, weather, composition, and appointment of the troops, skill in conduct, the resistance of their opponents, and other causes on which the success of military operations depends. But I gave it as my opinion that the force was insufficient. He said that Colonel Burr had gone too far to retract; that he had numerous and powerful friends in the United States, who stood pledged to support him with their fortunes, and that he must succeed. He then inquired of me my opinion as to the state of the magazines of provisions in New Orleans. I observed that, if Colonel Burr descended with the force proposed, they would starve, unless he brought provisions along with him, for I had before ascertained precisely the quantity then on hand. He said that it was his opinion, also, that there would be a scarcity of provisions; that he had written to Colonel Burr on the subject, and that he expected a supply from New York and Norfolk, where Colonel Burr had many friends. He said that he had noticed in the public prints the sailing of some vessels with flour, and supposed that they might be destined for that place. I did not see Doctor Bollman afterwards till the 5th of December, the day after the arrival of the mail; and I called on him to inquire the news.

He said that he had seen a letter from Colonel Burr, of the 30th of October, in which he stated that he should be at Natchez on the 20th of December, with two thousand men, to be followed by four thousand more, and that he could have raised or levied twelve thousand men as easily as six, if he had thought them necessary. I then informed Doctor Bollman that, if Colonel Burr came to New Orleans, I should oppose him. He replied, they must come there for provisions and equipments. He observed that Colonel Burr had great confidence in me, but he did not know what passed between us, and asked if I could not make such a defence as would cover my reputation, and still permit him to come. I replied in the negative, and we then parted. Some few mornings afterwards, he called at my quarters; there was a gentleman in the room, and I took him into the piazza. He said that he wanted to know my determination. I expressed my surprise, and told him that he knew my determination.

Mr. Hay. While you were thus extracting from Doctor Bollman the secrets of his party, were you taking any measures for the security of New Orleans?

A. Yes; my orders and instructions will show what measures I deemed it my duty to pursue. For these I am responsible to the Executive of the United States.

Mr. Martin. Are the ciphered letters filed?

A. Yes.

Q. Is the key furnished?

A. Here it is.

[Mr. Botts mentioned the situation of Mr. Tazewell, who was summoned as a witness on the part of Colonel Burr. He said that Mr. Tazewell had represented the situation of his family to be such as to require his immediate return home. Mr. Botts observed that, although he had introduced the request of Mr. Tazewell to be discharged, he should be compelled to oppose it.]

Mr. Tazewell stated that he had been unexpectedly summoned, he well knew, to answer interrogatories as to certain proceedings before the grand jury; that he had just been informed of an occurrence in his domestic affairs which made it indispensably necessary for him to return immediately; that there were many gentlemen in this place and its vicinity of the grand jury, who were as competent to give evidence on the points to which he should be called upon to depose as he possibly could be, and who would be subjected to no kind of inconvenience in attending. If he were to be examined at all, he requested that it might be immediately done, for the situation of his family was such that he should be compelled to return.

The Chief Justice said to Mr. Tazewell that he knew full well that it was not in the power of the court to discharge him.

Mr. Botts said it was impossible to examine Mr. Tazewell till General Wilkinson had gone through his testimony. It was not possible to know the importance of his evidence till General Wilkinson was cross-examined.

Mr. Hay observed that it was an unprecedented measure to introduce any member of the grand jury to prove what had passed in the jury room.

Mr. Botts. We have not said for what purpose we mean to introduce him.

Mr. Hay. I presume I may be permitted to *presume* for what purpose.

Mr. Baker said that he meant to speak generally of the propriety and convenience of giving testimony as to what passed in the grand jury room. One good effect, at least, would result from it: that, by introducing witnesses to prove what had passed there, it would prevent people from giving information to the grand jury which they could not support elsewhere.

Mr. Botts called for the key to the ciphered letters of Colonel Burr. General Wilkinson handed him a small pocket dictionary, and a paper containing certain hieroglyphics.

Mr. Botts. In the duplicate received by Dr. Bollman there is an erasure; will you be so good as to explain the cause of it?

General Wilkinson. That erasure was made by myself, and the words afterwards introduced by me. I have a deposition which will be more satisfactory than my own explanation.

Mr. Botts. Whose deposition?

A. Mr. Duncan's.

[Mr. Wirt read the deposition of Mr. Duncan; for which see note H.]

Mr. Botts. When was the erasure made?

A. During the sitting of the Legislature in New Orleans.

Q. When were the words restored?

A. I cannot now state with certainty.

Q. Was the letter exhibited to the Legislature?

A. It was introduced, but I confined myself to oral communications.

Q. What was the occasion of the erasure?

A. To put it out of the power of a certain faction in the Legislature, to whom, at that time, I intended to submit the paper; to conceal it from that faction who were opposed to my measures, and who, I believed, were inimical to the true interests of their country, and were laboring to excite suspicions that I was connected with Colonel Burr, in order to destroy the public confidence in me, and thus to defeat my measures. At the head of this faction I considered John Watkins, Esq., the Speaker. Having determined not to submit the letter, I restored the words.

Q. Did you prepare any translation to submit to the Legislature?

A. No; I only made notes.

Q. Did you make a translation for any other purpose?

A. Only a partial and imperfect one.

Q. For what purpose?

A. To understand it.

Q. Was there any other occasion for which a translation was made?

A. No.

Q. Did you make any translation for the Executive? A. No.

Q. Were those words, "yours, postmarked 13th of May, is received," erased?

A. Yes.

Q. Where is the copy of your letter covering a copy of that of Colonel Burr, and your depositions to the President of the United States?

A. It is among my papers.

Mr. Hay. Do I understand you correctly when I suppose you say that the translation intended for the Legislature of New Orleans was sent to the President? A. No.

Mr. Hay immediately observed that, on recollecting dates, he perceived that he had misunderstood General Wilkinson; that the letter was sent to the President before the session of the Legislature of New Orleans.

Mr. Botts. Do I understand you to say that this was *your* translation of the letter which was intended for the Legislature of New Orleans?

A. No; it was Mr. Duncan's.

Mr. Botts. Have you ever sworn that this was a true translation?

A. No; only substantially so.

General Wilkinson. May I be permitted to offer a few words of explanation? When Dr. Bollman was arrested, I will confess to you that I was so little acquainted with judicial proceedings, that I did not know it was necessary to do more than accompany him with a letter of advice. I was about to send him off in this way, when Mr. Duncan suggested to me the propriety of sending forward a deposition to justify his commitment. I put the letter into the hands of Mr. Duncan, with the key; and he made out the interpretation. When Mr. Duncan presented the translation to me, I stated my objections to the omissions. He urged me to sign the deposition. The time was urgent; the express waiting; and I confess that I feared a rescue. This did not give me much time to consult my understanding. If I had, it is probable that I should have resisted the signing of the deposition, with those omissions, notwithstanding my confidence in the judgment and integrity of my counsel. I was also at the time oppressed by domestic afflictions, and my mind was hurried and agitated by the painful and interesting scenes which surrounded me.

Mr. Botts. Were there variations between this original letter in cipher, and that sent on to the President?

A. Yes.

Q. Were they noticed by you or by Mr. Duncan in your presence?

A. I suppose so; because I objected generally, to the omissions.

Q. How was the cipher formed?

A. It consisted of an American edition of Entick's dictionary, and of hieroglyphics.

Q. Which was formed first?

A. The dictionary.

Q. When was that formed? [Here General Wilkinson referred to a letter, without a signature, dated in 1800, and said he presumed it must have been formed about that time.]

Q. Do you know the time of the year?

A. I presume it was October.

Mr. Baker. To whom was that letter addressed?

A. To myself.

Q. By whom was it written?

A. By Colonel Burr. [General Wilkinson observed that it was a private letter, to which he referred merely to refresh his memory, the concluding paragraph of which is, "When I receive your cipher and your address, you shall hear from me." Mr. Wickham insisted on seeing the letter; General Wilkinson refused; but said it was at the disposal of Colonel Burr, and handed it to him.]

Mr. Botts. With whom was the cipher formed?

A. Colonel Burr and myself.

Q. When were the hieroglyphics agreed upon?

A. To the best of my recollection the hieroglyphics, which refer to the alphabet, were formed about the change of the Administration, after the induction of the President. The hieroglyphics are divided into two parts: one part relates to the alphabet and figures, and the other part to arbitrary names or designations.

Q. When were the arbitrary names established?

A. I think in the year 1795 or 1796, but not delivered to Colonel Burr at that time.

Q. Who originally devised the cipher?

A. That you hold in your hand (the hieroglyphics) was devised partly by myself and partly by Captain Campbell Smith.

Q. Are you sure that it was in 1796 in which that part was devised?

A. I think I said in 1795 or 1796, but could not ascertain which; but, adverting to the motives which induced me to form it, I think it was in 1794.

Q. Are there no circumstances which can enable you to ascertain the time?

A. I could have proved with certainty the time, if a witness whom I had summoned had attended. Here is another cipher made by Captain Smith, in 1794; and the hieroglyphics representing the President and Vice President are the same with those used in the cipher with Colonel Burr.

Col. Burr. What was the mode adopted by you of sending round the prisoners? By public vessels?

A. No. My plan was to engage passages on board private vessels, and to lay in a double stock of stores for their accommodation.

Q. When did your despatches go on board the vessel? Can you ascertain the time?

A. Not without recurring to my correspondence.

Mr. Wirt. You had been for many years in habits of intimate correspondence with Col. Burr?

A. Yes.

Continuance of Gen. Wilkinson's evidence.

TUESDAY, *September* 29.

Gen. Wilkinson, addressing the Judge:

From the rapidity with which the interrogatories were put, and the promptitude of my answers when last before you, I fear some misapprehension may have occurred; I therefore beg leave to explain the facts to which the interrogatories appeared to be pointed, which I trust I shall be able to do clearly, concisely, and satisfactorily.

The only explanation of the ciphered letters of Col. Burr, transmitted by Swartwout and Bollman, which I have made, was done hastily, and by piecemeal, at Natchitoches; I think I have called this an imperfect interpretation, and I have done so, because, although it gave me their full sense, yet, by omissions and abbreviations, it could not be well understood by another.

On reflection, I think it was from this document, and not from notes, that the purport of Col. Burr's letters was given to the Legislative Council and Representatives of the Territory of Orleans. I find the summons from the House bears date the 15th of Januray last, and I believe the examination commenced on the 17th. It lasted two days, and therefore I cannot recollect the particular course or circumstances. I find, by references to my papers, that certain documents were submitted to the clerk to be read under restrictions; and it is probable I carried with me to the House all the papers respecting the subject of inquiry.

I have some impression that this same document was proffered to the grand jury to aid them in their interpretation of the ciphered letters of Colonel Burr, but I cannot speak with certainty. This examination lasted several days, and, like that before the Legislative Council and Representatives of the Territory of Orleans, was diffuse, desultory, and complicated; and therefore it is impossible for me to charge my memory with minutiæ.

The interpretation of Mr. Duncan was made the 25th or 26th of December, 1806, twenty days before my examination by the Legislative Council and Representatives of the Territory of Orleans.

I did not transmit an interpretation of the ciphered letter to the President, but I well recollect explaining it to Mr. Isaac Briggs, the confidential messenger sent with my letter of the 12th of November, who was charged also to make oral communications to the President.

By reference to the original letter, it will be found that a deposition is attached to it: this was done preparatory to the transmittal of it to the President, as was my intention, by a special messenger; but the fear that it might be lost changed my determination. I kept it in my possession, and brought it with me.

Referring to Colonel Burr's letter of the 10th of October, 1800, I have said that I believed the cipher depending on the book was formed in that year, yet it may have been afterwards. I perfectly remember that, about that period, Colonel Burr informed me he had to send one hundred and fifty miles for the counterpart of the book; and, also, in answer to a letter I wrote him from the frontier of Georgia, the Oconee river, in the year 1802, he then being in Charleston, he informed me he could not write as freely as he wished, as he had not the cipher with him.

In accounting for the erasure of the duplicate of Colonel Burr's letters, I have mentioned the apprehension which had been excited of my being an accomplice of Colonel Burr's, and that I was preparing for his reception. This device had excited such alarm, and the friends of Government were so incensed, that I was cautioned by Silas Dinsmore, Esq. to take care how I moved, as I was in danger of being tarred and feathered.

After General Wilkinson had finished his address to the court, Mr. Martin asked him if he had the original translation of the ciphered letter of Colonel Burr? His answer was, I have not. I have looked for it, but cannot find it.

General Wilkinson then said that he wished to present the deposition of Captain Walback, formerly a member of his family. It went to explain his very general habit of corresponding in cipher. [See the deposition of Captain J. B. Walback.]

Mr. Wickham. Have you ever accurately deciphered the letter sent to the President?

A. No. I have said before that the only interpretation I ever made was hastily done at Natchitoches.

Q. Then you are not able now to point out the difference between Mr. Duncan's translation and the original letter?

A. Specifically I cannot, *substantially* I can. Such parts were left out as were calculated to inculpate me, for the reasons already stated.

Q. I observe one of the ciphers in hieroglyphics designed in 1799 or 1801.

A. That is erroneous. When the hieroglyphies were formed, they were taken from a small slip of paper, and annexed to that in your hand to prevent its being lost.

Q. Can you tell when they were made?

A. I cannot, precisely. I have before stated the time, as nearly as I can.

Q. Can you tell upon what occasion they were made?

A. For the purpose of communicating with Colonel Burr.

Q. Do you recollect your having sent a letter to Colonel Burr, from St. Louis, in May or June, 1806?

A. I have such an impression, but have not the most distant recollection of its contents.

Mr. Wirt submitted it to the court whether it could be proper for the opposite counsel to interrogate General Wilkinson as to a letter which was in their own possession. If they meant to rely upon the letter as evidence, they ought to produce it. He considered it unfair to select such parts as might tend to inculpate General Wilkinson, and keep back those which would lead to an explanation of his conduct.

Mr. Wickham said it was their paper, and they were not bound to produce it till they thought proper. Their object was to cross-examine the witness, and see whether he was consistent with himself. This they had a right to do.

The Chief Justice said that the question would not be permitted to have any bearing on the cause, unless the letter was produced. Anything drawn out of the letter would not be testimony, unless the opposite party, who had it in their possession, would exhibit it to the court; but it was obvious that they had another object, which was to ascertain the consistency of the witness.

Mr. Wirt. If the object be to shake the credibility of the witness, it is not fair to him and to the conduct of the cause to exhibit the whole letter?

Mr. Baker. A very ingenious mode has been adopted by the gentlemen. We put the questions, and they undertake to furnish the answers, without leaving it to the witness to do it himself. We do intend to shake the credibility of General Wilkinson, and to make him produce the shake himself.

Mr. McRea. I understand the court to say that the examination, as to the contents of the letter, shall have no effect, unless the letter itself be produced.

Chief Justice. General Wilkinson says that he has no recollection of the contents of the letter. The subject-matter of the letter cannot be established by the examination; but the witness may be cross-examined for the purposes avowed by the opposite counsel.

Mr. Wickham. Do you recollect that you did write to Col. Burr in 1806?

A. I have before stated that I have such an impression; but I have no recollection of the contents of any communication made to him, although I remember the motive which induced me to write.

Q. You have no recollection of any particular expression?

A. No: except in a letter of October or November, 1805.

Q. Have you no recollection of any expression or sentiment expressed in your letter of 1806?

A. I have no recollection.

Q. Was it your expression that we should have a war with Spain?

A. It was my opinion; and there was a very general impression that we should have a war with that Power.

Q. Do you recollect writing anything respecting the measures of the Government in relation to a war with Spain? Have you no recollection of any opinion expressed in a letter to Col. Burr?

A. I do not recollect having expressed any opinion respecting the measures of the Government. The only expression of which I have any idea, is one used in a letter of October or November, 1805, in which, I believe, I say, "I fear Miranda has taken the bread out of your mouth."

Q. There were letters published from you while in the neighborhood of the Spaniards. Have you copies of those letters here?

A. I have the whole correspondence.

Q. We only want the letters of September and October, which state that war with Spain is inevitable.

General Wilkinson. I think I may have said so, and I believe that I have papers here which throw some light on the subject. Here are my instructions to the officer who commanded the troops when they left St. Louis. [General Wilkinson handed to Mr. Wickham copies of his instructions to Col. Cushing.]

Mr. McRea. What is the date of those instructions?

A. The 6th and 8th of May, 1806.

General Wilkinson said that he would with pleasure submit the whole correspondence, if he could do it consistently with his own ideas of propriety; but there were contained in it such secret military operations as it might be improper to expose.

Mr. Wickham. I think you state that, at that time, the expectation of war with Spain was very general?

A. It was so; and, if my instructions to Col. Cushing can be read, they will show my own impresssions.

[Here Mr. McRea read the instructions of Gen. Wilkinson to Col. Cushing, of the 6th and 8th of May, 1806, for which see notes K and L.]

Q. I think you have said there was a universal expectation of war with Spain, about the time when the troops of that nation crossed the Sabine?

A. Yes, I have said so; I had made arrangements for a general attack.

Q. To what cause are we to ascribe the accommodation which took place between the two armies?

A. To a wish to spare the effusion of blood, and, perhaps, because on one side there was reluctance to fight.

Q. On which side? A. On the side of Spain.

Q. Can you tell the particular motives which induced them to recross the Sabine, and change their position?

A. I think I can explain them. Immediately on my arrival at Natchitoches, on the 24th of September. I addressed a letter to Governor Cordero, whom I considered the Commander-in-Chief of the Spanish forces on that frontier; I communicated to him my orders from the President and urged him, on the ground of right and of humanity, to withdraw his troops from the east of the Sabine, and recross that river. Whether this or the vigorous preparations for offensive operations which I immediately commenced on my arrival at Natchitoches, produced the effect or not, I cannot tell; but the fact is, that the Spaniards, about the 27th of the month, raised their camp at Bayou Pierre, marching by their right, intersected the highway from Natchitoches to Nacogdoches, about twenty miles in my front, pursued that route, and recrossed the Sabine about the 29th or 30th.

Q. Was this after you had received the ciphered letter?

A. No; it was some time before.

Q. Had you any correspondence with the Spanish commandant on the subject of Colonel Burr's expedition against Mexico?

A. None. The earliest communications which I made on that subject were after my return to Natchez?

Q. Has the jurisdiction of the United States ever been exercised as far as the Sabine?

A. I cannot tell.

Q. Was it in consequence of instructions from the Government that you concluded the convention with the Spanish commandant?

A. No.

Q. I do not recollect whether the convention has ever been published?

A. Never.

Q. Have you any copy of that convention?

A. Yes; but, until it shall be the pleasure of the Government to publish it. I do not think myself at liberty to divulge its contents; I do not think it reconcilable to the duty of a military commander to anticipate his Government in the publication of official communications.

Q. Were there any secret articles in that convention?

A. None. There was but one article.

Q. Was there any sum of money agreed to be paid on either side?

A. Not one cent.

Q. You note two letters of the President, one of the 21st of October, and the other of the 12th of November, 1806. Have you a copy of that of the 12th of November? and will you give me leave to ask whether that letter was before the grand jury?

A. It was submitted to the grand jury.

Mr. Wickham said that they called for a copy of that letter; if the counsel on the other side thought proper to oppose it, they might do it at once.

Mr. Hay. We shall certainly oppose the production of the letter; the President has been consulted on the subject, and he has excepted such parts as he thought it would be improper to produce.

The Chief Justice remarked that, after the President had been consulted, he could not think of requiring from General Wilkinson the exhibition of those parts of the letter which the President was unwilling to disclose.

Mr. Wickham. The whole letter having been before the grand jury, and acted upon by them, we certainly have a right to call for it also.

Q. Were the Spaniards in considerable force on the east side of the Sabine?

A. They were reputed to be so.

Q. What was the strength of the army of the United States?

A. About five hundred effective men.

Q. What orders did you receive from the Government in the months of December and February last?

A. I cannot say what particular orders I received during those months. Owing to the frequent changes of my position, I was for more than six months without orders. But it is impossible for me to answer the interrogatory to the extent to which it is put, without subjecting myself to severe military penalties; nothing can be more improper or dishonorable than to divulge military orders of a secret or confidential nature.

Mr. Wickham. There can be no doubt but, under the sanction of the oath which General Wilkinson has taken, he may be compelled to give testimony as to the points on which he has been interrogated. In England, nothing is more common than for the most secret transactions to be disclosed in a court of justice. Considerations of delicacy in the witness have never been permitted to have any weight.

Mr. Hay. There is a material difference; those were cases between individuals; this is a communication from the Executive Government. We are not at liberty to dive into the secrets of the Executive Department to know what orders they have given to their agents, and to proclaim those orders to the world—orders which are given for the public good. There can be no doubt but that the public good does require that various orders of the Government should forever remain a secret.

Mr. Wickham. The gentleman did not understand my question. I asked General Wilkinson what orders he had received from Government in relation to Colonel Burr?

Q. Did you receive any orders to attack Colonel Burr and his party?

A. That question may require some qualification.

Q. Did you send any officers in disguise to take Colonel Burr?

A. I sent three.

Q. Their names?

Mr. Hay said he did not think General Wilkinson was bound to answer such questions; that he was not bound to furnish evidence against himself, or to subject himself to prosecution. Although he believed that the exigencies of the times would justify the measure which General Wilkinson had adopted, it was left with himself to determine whether he would answer the question or not.

General Wilkinson. If the question goes to criminate myself, I presume that I am not bound to answer it.

Chief Justice. Would General Wilkinson be subjected to an action for sending to apprehend Colonel Burr, unless he had been seized?

Mr. Hay. It may go to criminate him as a military man; he may have acted without orders.

Mr. Wickham. I do not presume that he acted without orders, but under the orders of the Government.

The Chief Justice said that he could not perceive the application of the evidence; but as evidence was introduced to show the flight of Colonel Burr from Washington, this, he presumed, was intended to account for it.

Mr. Wickham. Will you state the names of the officers sent to apprehend Colonel Burr?

A. Captain Hook, Lieutenant Peter, Lieutenant Mulford, Doctor Davidson of the army, and Doctor Carmichael, of the Mississippi Territory.

Q. Did you direct them to go without uniform?

A. I believe I did.

Q. Did you direct them to conceal the object of their mission?

A. I feel great delicacy in revealing my orders. I think I did mention to them the propriety of going in the attire of private citizens, to elude the vigilance of Burr's spies, many of whom were in New Orleans, and would give him notice of their departure from that place; it was also prudent to send them in that manner, that the jealousy of the

Spaniards, through whose territories they had to pass, might not be excited. They were sent privately, for the success of the enterprise depended upon it.

Q. Did you give them written or oral instructions?

A. Both.

Q. Have you copies of the written instructions?

A. Not here.

Q. Will you furnish copies?

Mr. Hay objected to the production of those orders; he said that they had a right to impeach the credibility of the witness, but not to compel him to disclose the orders given to those under his command.

Q. Were these orders to seize Colonel Burr wherever they could find him?

A. They were sent on that service expressly. I think the orders were confined to Natchez; information having been received that Colonel Burr had taken up his quarters there.

Q. Were there any orders to seize him, even in court?

A. I cannot say, but presume there were not.

Q. Were any private soldiers sent on this service?

A. No.

Q. Were any soldiers sent to Lieutenant Jones's gunboats?

A. Infantry were furnished to supply the place of marines in all the gunboats.

Q. Were any instructions sent by you that the men in Lieutenant Jones's gunboats should act?

A. I gave Lieutenant Jones no orders, as he was not under my command.

Q. Was Commodore Shaw considered under your authority?

A. He was rather considered as co-operating with me; but he had a discretion of his own.

Q. Was there a recommendation to Commodore Shaw to give directions to Lieutenant Jones to take any measures to apprehend Colonel Burr?

A. I think the orders required him to do so.

Q. What orders were given for the disposal of Colonel Burr?

A. The orders were that he should be put on board a vessel, and sent by the way of New Orleans to the City of Washington.

Q. Were these orders written?

A. I believe they were.

Q. What orders had you from the Government, or did you do it on your own authority?

[General Wilkinson took time till to-morrow to consider the subject, and to examine his papers.]

Q. When you were at New Orleans, were not letters addressed to other persons frequently brought to you from the post office; by whose orders were they delivered to you; were they opened, and with what view?

Mr. Hay thought they had no right to ask such a question. It might be important between the United States and General Wilkinson. But it does not appear to be proper to interrogate him as to his conduct any where, unless it has some bearing on the cause; nor can a witness be asked any question, the answering of which might subject him to a prosecution. If we had introduced evidence on that point, they had a right to cross-examine him.

Mr. Wickham. We may suppose, without impeaching the credit of General Wilkinson, that he will give as favorable an account of his conduct as any man standing in his situation may be disposed to do. General Wilkinson has detailed a number of facts to account for the conduct of Colonel Burr: he has taken very strong ground. We wish to show that the General has the strongest possible motive to criminate Colonel Burr. We were permitted to ask him about sending officers in disguise to seize Colonel Burr; we wish now to prove some other seizures. This evidence has a direct reference to the case of Colonel Burr. If General Wilkinson took all these measures, it will surely have a tendency to weaken his testimony.

Mr. Martin. We mean to show that General Wilkinson is identified with the Government; and the Government had declared they would justify him. We have a witness to prove the express declaration of the Secretary of War, that General Wilkinson stood low with the Government till his energetic measures at New Orleans had raised him in the estimation of the President. They can only justify his acts, by showing an impropriety in the conduct of Colonel Burr. The more we show that the Constitution has been trampled on, and the rights of the citizens invaded, the more they will endeavor to show the impropriety of the conduct of Colonel Burr, in order to justify it.

Mr. Hay. Mr. Martin has avowed the motives of Colonel Burr's counsel to be to identify General Wilkinson with the Government. Admitting that General Dearborn had made the declarations ascribed to him; admitting that the President had formed that opinion of General Wilkinson, how can his answer to the question propounded have any bearing on this case? Suppose General Wilkinson should say, that, in consequence of the expected arrival of Colonel Burr, the agitated state of the country, and knowledge that he was surrounded by the accomplices and partisans of Burr in New Orleans, he had taken letters from the post office (and he would only have done what he ought,) how could it affect the present case? It is manifest that an answer of General Wilkinson must leave the question between the United States and Colonel Burr exactly where it was before.

Mr. Wickham. When these questions were asked Mr. Murray before, they were thought proper, and he was even cross-examined by the counsel for the prosecution. The gentleman had ascribed to Colonel Burr improper acts. Now, to impeach General Wilkinson's credibility, we show that he has been guilty of violent acts. Is he not interested to show the conduct of Colonel Burr to be improper, in order to justify his own?

Mr. Baker. Suppose, says Mr. Hay, this declaration of General Dearborn to be true; suppose that General Wilkinson did not deserve to stand high in the confidence of the Government; would

it not have any bearing on the case? would it not leave the question between the United States and Colonel Burr exactly where it was before? At one time the counsel on the other side seem willing to give the General up. Now they stand forward as the champions of the worthy General. Suppose it be proved that he has thrust his hand, or directed others to do it, into the post office, and pillaged letters. Suppose it be proved that he has made erasures in letters, and then sworn that translations of them were true copies, which were as much like the originals as any other thing; and that he has sworn to this, that, and the other, whether true or false; will not all these things affect his credibility?

Mr. Wickham said it was a question entirely for the consideration of General Wilkinson himself. If he thought proper to answer the question, it was not the business of the prosecution to interfere.

The Chief Justice, after making some remarks on the nature of the question, observed that General Wilkinson was not bound to answer any question that might criminate himself.

Some observations were made as to the extent of the opinion of the court. Mr. Wirt supposed, from the decision of the court in the case of Wyllie, that General Wilkinson could not be bound to answer the question.

Mr. Wickham thought directly the reverse.

Mr. Wickham (to General Wilkinson.) You have heard the opinion of the court. Were or were not letters addressed to other persons frequently sent from the post office to you; by whose orders, and were they opened, and with what view? Can you answer that question without criminating yourself?

A. I shall not answer that question.

Mr. Wickham. Were orders sent to stop and examine travellers?

A. There were. These were the joint orders of Governor Claiborne and myself. At that time Colonel Burr was daily expected at Natchez with two hundred men, and I wished to cut off all communications between that place and New Orleans, in order to prevent him from receiving information from his adherents, and to gain time for strengthening our defences. The imperious circumstances which justified this measure I will relate. A general panic had seized the friends of the Government in New Orleans.

[Here General Wilkinson was interrupted by the counsel of Colonel Burr, who objected to his stating the motives which governed him.]

Mr. Wirt said, that if the witness were called on to accuse himself of arbitrary acts, he ought to explain the motives with which those acts were committed.

Mr. Wickham said it was their wish to go on with the cause, without being interrupted with the explanation of the witness, and after they had gone through, the counsel for the prosecution might ask for any further explanation which they deemed proper.

Mr. Wirt observed that he did not mean to interrupt the examination. But it was well known that the proceedings of each day are published; and it is important to the feelings of the witness that he should state the grounds on which it proceeded.

Mr. Martin. The proceedings have heretofore been published, without regard to the feelings of Colonel Burr.

Mr. Wickham (to General Wilkinson). When did General Adair arrive in New Orleans?

A. On the 14th of January.

Mr. Wickham. Has your conduct, in seizing Adair, Ogden, Swartwout, and others, been approved or disapproved by the Government? Have you received any communication from the Government on that subject?

Mr. Hay. It has been the constant effort of the counsel on the other side to identify General Wilkinson with the Government. We have heard of the plundering of the post offices, violating oaths, and prostrating private rights. Now it is asked if the Government approved of these acts. Is it decorous, is it proper, to pursue this course? They may ask questions to implicate General Wilkinson, but is it proper to endeavor to cast an imputation upon the Government? I feel no solicitude on the subject; for when all the circumstances are considered, and the real situation of that country understood, though I will not say that the measures were strictly lawful, yet I will say the exigencies of the times called for them; and that the person who held the high and responsible situation of General Wilkinson was bound to pursue the course which he did. General Wilkinson still retains the command of the army. If the gentleman wish to infer from that circumstance that the Government approved of his conduct, let them do so.

Mr. Wickham. It is not our intention to criminate the Government, but to obtain the truth. We hope that General Wilkinson will not say that his conduct has been approved by the Government. Is this a State secret?

The Chief Justice said, that he should be sorry to require an answer which would state the opinions of the Government. He was sorry that an objection had been made to answer the question.

Mr. Hay said, he believed that the Government knew nothing about it, and rather than it should be supposed that the Administration directed measures which they were unwilling to avow, let them go on. He was willing that they should go on; and, instead of making this an inquiry into the conduct of Colonel Burr and his accomplices, let it be solely, as it seemed to be, an inquiry into the conduct of the Government.

Mr. Wickham repeated the same question to General Wilkinson, whether his conduct in seizing General Adair, Ogden, Swartwout, and others, had been approved or disapproved by the Government; and whether he had received any communication from the Government on the subject?

General Wilkinson said he had no objection to answer the question, except so far as the answer might be considered as a disclosure of what might be deemed private instructions. In the first instance, said General Wilkinson, I acted on my

own responsibility. I have said that I was left six months without orders. But I seized no man under the orders of the President.

THURSDAY, *October* 1.

General Wilkinson was about to explain more fully some of the interrogatories put to him at his last examination, when he was interrupted by

Mr. Wickham, who declared that he felt no disposition to interfere with the explanations of the witness, but was very anxious to go on with the cause. With respect to the motives with which any act was done, he knew nothing and cared nothing.

The Chief Justice declared that General Wilkinson had a right to explain any interrogatories; and again repeated the substance of the opinion which he had before given.

General Wilkinson proceeded: I have been asked whether, in October, 1806, I did not expect immediate hostilities with the Spaniards? I was required to account for the cause of the sudden change of position of the Spanish army? I was interrogated as to the convention with the Spanish commandant, and, with peculiar delicacy, I was asked whether any money was received as a condition? also, whether I had not posted guards on the highways about New Orleans, to intercept travellers? To these interrogatories, quite unexpected, I made such replies as I was then enabled to do from memory. By referring to my papers, they will show that I did expect a war with Spain so early as September, 1806. [Here the General referred to an extract of his letter of the 8th of September, and his letter of the 4th of October, 1806, to the Secretary of War, which were read. See notes M., N.] On my advance to take command of the barrier post, I passed Fort Adams on the 12th of September. There I found two letters from Colonel Cushing, detailing his correspondence with the Spanish commander. I was then asked for a copy of the convention. I am now about to do that for which my country and gentlemen of my profession may, perhaps, condemn me. But, under the charges and insinuations by which my character has been assailed, I flatter myself that, should I be guilty of any impropriety, the circumstances in which I am placed will excuse me. Here are all the papers relative to that convention. [Gen. Wilkinson produced a number of letters containing the correspondence between him and the Spanish commandants, about the time the troops of that nation recrossed the Sabine.]

Mr. Martin said they wished to have the papers, and hoped the court would have no objection.

The Chief Justice observed that he had no objection, but wished it to be distinctly understood that he would not coerce the production of any paper which related to a negotiation between this country and any foreign Government.

Mr. Martin said that would depend upon circumstances. He held it a sacred principle, that if the Government thought proper to prosecute a citizen, they were bound to produce every paper which might be necessary for his defence, or give up the prosecution.

Mr. Hay thought it would be improper to read the papers, because they related to a negotiation with a foreign Government, and because they had no relation to the subject before the court. General Wilkinson had, indeed, from the insinuations which had been made, been induced to produce those papers; but it was evidently done with a considerable degree of embarrassment, and would not justify the reading of them if it were otherwise improper.

Mr. Wickham. I have asked for the convention with the Spanish commandant, but am told that it was a State secret. I concur with Mr. Martin, that when an individual is prosecuted by the Government, no State secret should prevent the production of every paper necessary for his defence.

General Wilkinson said, he wished it to be understood that these were very imperfect translations of the letters from the original Spanish, and therefore that he could not deliver them, but under the stipulation that they should be accurately translated before publication, as he had discovered Governor Cordero and Governor Herrara to be officers of polished education, from his correspondence with them. He had made this stipulation as a duty which military men owe to one another throughout the world. These letters contain the convention, a convention without an article.

The Chief Justice said that he would not compel the production of the convention, unless its bearings on the case be shown.

Mr. Martin. We have a right to it. I hope it will be noted that we have made a solemn demand of these papers.

General Wilkinson proceeded: The next question which was asked was, whether I had not made private communications to Lieutenant Jones. I have said that I gave no orders to Lieutenant Jones; but if I had, here are documents to show, if not a justification of my conduct in all the measures I presumed, at least an extenuation. [Here General Wilkinson presented several papers, showing the agitated state of New Orleans, and the dangers with which it was threatened. They were not read. See O, P, Q, R.]

Mr. Wickham to General Wilkinson. Do you recollect the last question I put to you? Has your conduct in seizing Swartwout, Bollman, Ogden, and Adair, been approved or disapproved by the Government? And have you received any communications from the Government on this subject?

General Wilkinson said he must refer to his Honor to know whether he was bound to answer that question.

The Chief Justice declared that it might be answered under the restrictions already laid down.

General Wilkinson. I can say that three of those persons, perhaps four, were seized on my own responsibility, without any orders from the Government.

Mr. Wickham. Which three?

A. Bollman, Swartwout, Ogden, and perhaps Adair.

Q. Had you any orders then or afterwards to seize them? Had you any orders with respect to the seizure of Colonel Burr by military force?

A. No, not at that time.

Q. Had you any afterward?

A. That is a question of very great delicacy with me. (Addressing the judge:) Can a question be fairly put, and an answer coerced, which may destroy a man's honor?

Mr. Wickham said there was no rule of law which prevented a witness from giving an answer, unless it subjected him to a criminal prosecution. Mere sympathies were no cause of refusal. However unpleasant these questions might be to General Wilkinson, it would be a shameful dereliction of duty in the counsel of Colonel Burr not to put them. He said that he had not experienced any sympathies toward his client.

General Wilkinson (to the judge.) Is a trial before a court martial similar to a criminal prosecution? I might be subjected to military punishment, to as severe punishment as could be inflicted by a civil tribunal, for revealing my orders.

The Chief Justice said that he was not sure that General Wilkinson could be required to answer that question.

Mr. Wickham contended that there could be no articles of war which could punish a man for disclosing what he is called upon to declare in a court of justice. The court had a right to require the disclosure, and would enforce its own authority.

Mr. McRae contended, that when the answer required would lead to the discovery of a fact which might subject a man to punishment, it was always deemed a good reason to withhold it. He understood the answer which might be given by General Wilkinson to be of this nature. The question was calculated to extract from him a fact, the disclosure of which might tend to subject him to punishment. He could not say what would be done before a military tribunal, but it was possible that he might be punished if he should answer in a particular way. Suppose he should say that the Government did not authorize him to seize the persons of Burr and his accomplices, and that he acted upon his own responsibility; or suppose he should be acting under the authority of Government, but, upon examining his powers, should find that he transcended them; would not a disclosure of this fact criminate him, and subject him to prosecution?

The Chief Justice said that the question did not lead to the fact of seizing those persons, but to the authority with which it was done. If Gen. Wilkinson had committed the act with authority, he must show his orders.

Mr. Wickham said he did not believe that anything which General Wilkinson could say would be legal evidence in the cause. It was not that kind of evidence which was admissible in prosecutions of this nature; but it was important to know what orders the Government had given, and whether he had exceeded those orders.

Mr. Martin. We wish to know the conduct and character of the Government on this occasion. We wish to know whether any, and what, orders were given by the Government? Is there to be one rule as to the prosecution who wish to take the life of one man away, and another rule as to the man whose life they seek to take?

Mr. Hay had no objection to an answer from General Wilkinson as to the conduct of the Government throughout. He said that Mr. Martin had disclosed his real object to try the Government and not the accused. Will this ascertain the innocence or guilt of Colonel Burr? The object evidently was to arraign the Government before the bar of the public; but he was perfectly satisfied that when the conduct of the Government should be known, the people of the United States would think that the Government had done exactly as it ought to have done.

Mr. Wickham. In commenting on the evidence we shall endeavor to show that a number of witnesses have been brought forward by the Government who have taken a most decided part in the prosecution; and that their real object has been to render themselves acceptable to the Government.

General Wilkinson. I had an order from the Government.

Mr. Wickham. From what department?

A. From the Administration.

Q. From whom? A. From Mr. Jefferson.

Q. Have you any written order?

A. I have among my papers, but I will not produce it; I had rather go to jail.

Mr. Wickham demanded the production of the order; but said that if General Wilkinson required time to consider the consequences of a refusal, he had no objection to allow it to him.

General Wilkinson, (addressing the Judge.) You are, from professional experience, more competent to decide on the propriety of revealing my orders than I possibly can be. The letter which conveys the particular order alluded to may embrace a variety of other matter, many parts of which it would be highly criminal in me to divulge. I conceive I should forfeit my honor, and the confidence of all military men, if I were to reveal my correspondence with the Government, without the command of my superior.

Mr. Hay had no doubt but the order was in strict conformity with the law; but if there be private and confidential communications in the letter, it would not be required of General Wilkinson to produce it.

Chief Justice. If the order be mingled with other things, private and confidential, the court will not require its production.

Mr. Wickham (to General Wilkinson.) Did you, by letter or otherwise, request any person, not of the Army, to seize Colonel Burr and put him on board a vessel?

A. I gave instructions to a gentleman who is now here, (Silas Dinsmore, Esq.,) and who is not of the Army.

Q. Did you give such orders to others?

A. I recollect Doctor Carmichael, but no other person, except the officers of the Army.

Q. Do you recollect expressing to any person that he would confer the highest obligation on the Government by seizing Colonel Burr?

A. It is probable that I did, for those were my sentiments. My great object was to apprehend him and deliver him over to the civil power for trial; and the City of Washington was the place to which I wished him sent; but I had no idea of doing injury to his person. I recollect a German came to me, and proffered to take Colonel Burr; but, on coming to particulars, he said he would take him, dead or alive. I was shocked at the idea, and declined employing him.

Q. Have you the cipher No. 2?

A. I have not.

Q. Are you acquainted with a person by the name of Kibby?

A. I am acquainted with two of that name.

Q. Where do they reside? where does Timothy Kibby reside?

A. In Louisiana.

H. Have you had any communication with him on the subject of the invasion of Mexico, and when?

A. I cannot recollect; I have seen a deposition ascribed to him, inserted in the public prints, replete with falsehoods.

Q. You are not certain, then, whether you ever wrote to him on the subject?

A. I am certain that I never wrote to him specially on that subject. He was an officer of the militia, and I might have corresponded with him on some matters relating to his command. I recollect to have received an order from the Government to ascertain the strength of the militia in the Territory, and I might have spoken or written to him on that subject.

Q. Can you say whether you did or did not?

A. I cannot.

Q. Did you inform him of the object of Lieutenant Pike's expedition?

A. I think not, from the deposition I have seen; here are my orders to Lieutenant Pike. [General Wilkinson produced his instructions to Lieutenant Pike; see notes S, T.]

This is the information given by me to General Samuel Smith, which goes to illustrate my ideas of the state of our controversy with Spain. [Here General Wilkinson read the extract of a letter annexed, marked V.]

Mr. Wickham. You mentioned that Swartwout was with you about the 1st of October?

General Wilkinson. I think about the 8th or 10th; I believe I said the middle, because I marched on the 23d, and Swartwout had left me some days before.

Mr. Wickham. Your letter to the Government is of the 21st of October; will you assign a reason for so long delay?

A. I took time cautiously to draw from Mr. Swartwout what information I could obtain, lest I should excite suspicion. Another circumstance was, that I was busily engaged in making arrangements of the artillery, transports, and other military equipments, in order to take the field.

Mr. Wickham. You say, in your letter to the President, "that you are not only uninformed of the prime mover and ultimate objects of the daring enterprise, but you are ignorant of the foundation on which it rests, of the means by which it is to be supported, and whether any immediate or collateral protection, internal or external, is expected." I beg leave to ask, why you stated this to the President after getting the information you did from Swartwout?

A. The answer is very plain, but the question is complex; if you will dismember it, I can answer it.

Mr. Wickham read an extract from the letter, (being part of that just quoted,) and said, I think this is different from the information you gave the court.

General Wilkinson. I doubted the information I received from Swartwout; I could not suppose that Colonel Burr, or any other individual, would have the audacity or folly to undertake such an enterprise without the assistance of some foreign Power; I could not, therefore, view him as the prime mover, but as the instrument. I doubted Swartwout's declarations, and, although they had an effect upon my mind, I could not place solid confidence in them. He said that the people of the Territory were ready to join; he was a stranger in the country, and therefore could know nothing of their dispositions but from information; I was acquainted with them, and had heard of no such disposition.

Q. Then you doubted whether Swartwout was authorized to make these communications?

A. I beg your pardon; I believe that he was authorized and instructed to deliver me lessons of falsehood.

Q. Then you say that you still doubted?

A. It is so expressed in the letter.

Q. These expressions, I understood, conveyed the true state of your mind at that time?

A. I wish you to understand me. When I contemplated the audacity, the iniquity, and the folly of the enterprise, I did believe that Colonel Burr was stimulated by some foreign Power. With respect to revolutionizing the Territory, I could not place any solid confidence in it, until I received the communication of James L. Donaldson, Esq., when, combining all the circumstances, I wrote my letter of the 12th of November.

Q. Then I understand you to say that this was the true state of your mind at that time?

A. Yes. Propounding this question brings to my recollection a subject not thought of before. I inquired of Mr. Swartwout from whence Colonel Burr derived his funds; he said, from the aid of friends and the sale of property, in which sale he had been employed. I knew that Colonel Burr had no property. This declaration of Swartwout gave me less confidence in his communications.

Q. I observe, in your letter of the 21st of October, this expression—"my desire to avert a great national calamity." At that time you had

doubts whether the enterprise might not be salutary?

A. Would it be improper to assign my reasons why I supposed it might be salutary? As I passed through Natchez, I understood that Mr. Meade, who exercised the functions of Governor, had spoken of an attack on the Spanish post of Baton Rouge, and I was informed by a Mr. Dunlop and a Mr. Smith, that he had said the Government would connive at the measure.

Q. This postscript on the letter: "should Spain be disposed to war seriously with us, might not some plan be adopted to correct the destination of the associates, and, by a suitable appeal to their patriotism, engage them in the service of their country? I merely offer the suggestion as a possible expedient to prevent the horrors of a civil contest; and I do believe that, with competent authority, I could accomplish the object." Am I to understand that this postscript contains the true state of your mind at that time?

A. There is some uncertainty whether that postscript is a part of the original letter; it is noted on the corner in my own handwriting, and not in that of Mr. Burling, who was then one of my aids-de-camp, and by whom the copy was made.

Mr. Baker. It never was understood that a copy would be received by Colonel Burr. Now we see the necessity of having the original.

General Wilkinson. I have no sort of hesitation to state what my feelings were. If the Spaniards had been seriously disposed to war, I did believe that, by a suitable appeal to the feelings and patriotism of the deluded citizens who might have descended with Colonel Burr, they would have been induced to join our standard, and oppose a foreign enemy, sooner than to enter into a conflict with their own countrymen. My idea was this: that the President should have forwarded to me blank commissions, to be offered to influential leaders.

Mr. Wickham. This postscript says nothing as to leaders, but to the body in general.

General Wilkinson. I cannot give any definite idea of my sensations at the moment; I think I could not have meant leader, but the leaders.

Q. If you were ignorant of the intention of the leaders, why not as well apply the expression to the leader?

A. Because I did not think I could offer anything to him which he would accept.

Q. As to the postscript, you are uncertain whether it was written at the time of the original letter?

A. Though I am uncertain of that, yet I believe it contains a correct representation of my feelings.

Mr. Randolph. In case of actual hostilities, were you authorized to accept the services of volunteers?

A. I should certainly think I was.

Q. And to commission them?

A. No: but I might have mustered them. The President has no power to grant commissions, but with the approbation and consent of the Senate. I recollect that, during the Administration of Washington, volunteers were accepted: there were no commissions granted, but warrants of authority, which were obligatory in those corps, but conferred no command over an officer of the line.

Mr. Randolph. My question is this: If hostilities had been determined on with the Spaniards, would General Wilkinson have been authorized to accept the services of volunteers?

A. I think so at present, but a reference to my instructions will more fully show.

Q. And to drive the Spaniards beyond the Sabine, and pursue them into Mexico?

A. Not to pursue them beyond the Sabine.

Q. If the Spaniards had not made the convention, and receded from their position on the east side of the Sabine, would you have attacked them?

A. Yes.

Q. From your own responsibility, or the orders of the Government?

A. From specific instructions. I had contemplated the possibility of such an event, and had given my orders accordingly. [These orders were not offered in evidence, but may be seen in note W.]

Mr. Martin. Did you not drive them beyond the Sabine?

A. (Witness smiling.) It was a sort of driving.

Mr. Wickham. You say that the first intimation you had of Colonel Burr's designs was from the ciphered letter?

A. I have said so; but I had received a number of ambiguous hints before.

Q. In what way?

A. By letter.

Q. When did you communicate the contents of this ciphered letter to the Government?

A. You will observe, in my letter of the 12th of November, reference is made to a confidential messenger, Mr. Briggs, to whom I repeatedly read the ciphered letter, to enable him to communicate the contents to the President.

Q. What communication did you make through Mr. Briggs? was it Mr. Duncan's translation?

A. No; Mr. Briggs left Natchez immediately after the date of my letter of the 12th of November; Mr. Duncan's translation was made in New Orleans after I arrived there.

Q. Have you the paper about you, containing the instructions to Briggs?

A. I gave no instructions to Briggs, except verbal ones.

Q. Have you the translation made by you?

A. No; I have looked for it, but cannot find it.

Q. Was it before the grand jury?

A. Yes; it was an old worn-out paper.

Q. Was this information by Briggs an exposition of the whole contents?

A. I read the heads to him, and verbally explained the contents.

Q. Was the letter completely deciphered?

A. I have said *no* frequently; I have said that the only interpretation made by me was hastily done at Natchitoches?

Q. Then did you not relate the whole contents to Briggs?

A. I laid it before him, and explained the contents as already stated.

Mr. Randolph. I think, in this letter, you say, "Miranda has taken the bread out of your mouth?"

A. No; you are quite mistaken. That letter was written, I believe, in October, 1805.

Q. Admitting it to have been so far back, how came it to be a matter of surprise to you that an expedition was set on foot, according with your own ideas? or that you should say Colonel Burr's views were not distinctly known until you received the ciphered letter?

A. I had received a number of ambiguous letters from Colonel Burr; and in a letter of mine to him, I made use of the expression, "I fear Miranda has taken the bread out of your mouth," in order to draw from him his real object.

Q. In what manner did you consider Miranda as taking the bread out of his mouth?

A. If I can state the grounds of those opinions, I would say that they were derived from letters I received from Colonel Burr, which I am not at liberty to disclose.

Mr. Randolph. Was the position taken by the Spanish forces, considered by the President as an invasion of our territory?

A. Certainly.

Mr. McRae. I understood that opinion was founded upon what appeared in the public prints.

General Wilkinson. The President's orders were explicit; to drive them out of the territory claimed by the United States. These orders I communicated to the Spanish commandants.

Mr. Randolph. In the intercourse between you and the Spanish commandants, were all the forms of war observed?

General Wilkinson. In what respect?

Mr. Randolph. As to the military interviews; I considered this a state of war.

A. Between Natchitoches and Nacogdoches there was a constant intercourse.

Mr. Randolph. But in the relation of one army to another?

General Wilkinson. I can state the situation. I remember that the day on which I reached the Sabine, my advanced guard captured three Spaniards without arms, on the left bank. I had them returned to the Spanish commandant, and desired that he would not permit a repetition of the trespass.

Mr. Wickham. I think you said that you wrote to Colonel Burr from Natchitoches.

General Wilkinson. When did I say so?

Mr. Wickham. I thought I heard you say so.

General Wilkinson. You guess well; but, if I am not mistaken, you got that information from Swartwout.

Q. Did you write?

A. I did.

Q. What did you do with the letter?

A. Destroyed it.

Q. Did it go out of your hands?

A. It did; it was sent to Natchez, to which place I followed, recovered, and destroyed it. I will give you my reasons for so doing. After writing, I received the letter from Mr. Donaldson, dated 30th of October, and conveying the information received from Myers Michael, which removed my doubts as to the extent of Mr. Burr's designs, and their sinister nature.

Q. Then I understand you to say, that Mr. Donaldson gave you the first correct information?

A. It excited very strong apprehensions in my mind, that some general and deep-rooted conspiracy had taken place above.

Q. You have no recollection of the letter of the 13th of May?

A. No; I wish it could be produced. It would release me from all obligation to withhold the confidential letters of Colonel Burr.

Q. Did you write him any other letters?

A. I have an impression on my mind that I wrote him two or three letters.

Mr. Wickham. The ciphered letter gave you the first idea of a plan of revolutionizing the Western country?

A. The ciphered letter gave me no information on that subject.

Mr. Wickham. Did you ever give the Government any information before?

A. I had no definite idea of Colonel Burr's plans. I had received from him several letters of a very ambiguous cast, but they contained nothing treasonable. I wrote to a minister, (Robert Smith,) and in my letter I say "Burr is about something, but whether internal or external, I cannot discover. I think you should keep an eye to him."

Mr. Wickham. When was that letter written?

A. I cannot tell when I wrote it.

Q. When was Colonel Burr at St. Louis?

A. Colonel Burr was at St. Louis on the 11th of September, 1805, and left that place on the morning of the 19th. In the interim he had been in that quarter of the country where Kibby lives, though I do not know that he saw him.

Q. Which Kibby?

A. The fellow who gave the deposition which has been published.

Q. What is the date of your orders for descending the river? A. I cannot tell.

Q. Have you those orders here?

A. I am not certain; most of my papers are in Williamsburg. The troops descended in the beginning of May.

Q. Did you authorize any officer to arrest any person after you descended?

A. No: I gave instructions to Lieutenant Peter, whom I had left at Natchez, and required him to give me regular information. [See deposition of Lieutenant Peter, note X.] At the time I descended the river we had no posts except the Chickasaw Bluffs, on the Mississippi, and Massac, near the mouth of the Ohio, except a small party at the Arkansas, and opposite to Cincinnati.

Mr. Hay. Was there any post between the Chickasaw Bluffs and Massac?

A. No.

Q. Was there any military post between Pittsburg and New Orleans?

A. None except those which I have mentioned.

Mr. Wickham asked General Wilkinson for his alphabetical cipher, who went to his lodgings for it.

Mr. Wickham (to General Wilkinson after his return to court.) Can you ascertain when the hieroglyphic cipher was made?

A. The arbitrary characters were designed, I think, in 1794; but I do not say it was given to Colonel Burr at that time.

Q. Will you give me leave to ask upon what occasion it was formed?

A. I will with pleasure. Pending the Indian war, we had unhappily much dissension in the Army. I felt myself extremely oppressed and persecuted, and I had reason to believe that every artifice was put in operation to injure my standing with the Government, and to have me removed from service, if possible; and there were many who shared my persecution. In the autumn and winter of the year alluded to, a number of officers retired from the Army, either on furlough or by resignation, among whom was that most gallant officer, Captain Leonard Covington, since a member of Congress. At this time my quarters were embosomed in a wilderness, and remote from any post office, and we had no regular mail. The cipher was, therefore, designed to secure safety to a free correspondence and an unreserved interchange of sentiment respecting public men and public measures, particularly such as related to the army.

Mr. Wickham. I think you say it was formed in 1794?

A. Yes; and I will give you my reasons. I have another cipher, in which the hieroglyphics representing the President and Vice President are the same as in that now before the court, which was designed by Captain Smith for Captain Covington, in the year 1794, at the time he retired from the Army. [See an extract of a letter from Captain Covington to General Wilkinson, note Y.]

Mr. Wickham. I observe the word "republican" is represented in the hieroglyphic by '76, "aristocratic" by '89, "navy," by '96, "City of Washington," by a single house, and that an indifferent one. Pray, why was that, as the seat of Government was not removed till many years afterwards? I observe the City of Washington, but not Philadelphia, nor any place mentioned as the seat of Government.

A. The cipher was formed by my aid-de-camp, Captain Smith; and the designations originated in his caprice, without my privity or participation.

Mr. Wickham. Do you recollect for what purpose New Orleans was designated in the hieroglyphics?

A. I can probably account for it. If you will refer to those periods, you will discover that we were in an equivocal situation with all the maritime Powers, more particularly with England and Spain. The navigation of the Mississippi had been a subject of much discussion, and one in which the Western people felt a considerable degree of interest. The Ohio is also designated. That is probably confined to mere locality. We were then engaged in a war with the Indians, and were in the woods on the waters of the Ohio. I have before said that I could not account for the various designations; but I offer these as circumstances which may have influenced Capt. Smith in forming them.

Mr. Wickham. Do you recollect when the alphabet in cipher was put on this paper? (alluding to a paper on which the hieroglyphics were written, which he then held in his hand.)

A. Last winter; I believe they were put on to prevent them from being lost.

Mr. Wickham. Have you brought up the letter or communication from the Government which we wished to have here to look at?

A. I have not.

Mr. Hay. I think you said there was no military post between Pittsburg and New Orleans but Fort Massac, the Chickasaw Bluffs, and one at Cincinnati?

A. Yes; that at Cincinnati was established by the Government after the flight of Blannerhasset.

Q. Was there none at Natchez?

A. There were only Lieutenant Peter and a few men left at that place to keep a look out, and give me regular information.

FRIDAY, *October* 2.

Mr. Wickham called on General Wilkinson to produce the President's letter approving his measures.

Gen Wilkinson. By referring to my papers, I discover I have made a mistake. I find I have no orders from the President directing the seizure of Colonel Burr; the order is from the Secretary of War, and has been already published, directing me to seize the principals in the enterprise. I did believe I had an order from the President specifically directing the arrest of Colonel Burr. The mistake arose from my misapprehension of the tenor of a letter from the President, of February, which blends public communications with private affairs.

Mr. Wickham. Have you no letter from the Secretary of War approving your conduct in general terms?

A. I never had such letter from him. The approval of my conduct is expressed in qualified terms.

Mr. Wickham. You wrote the President about these transactions; was the letter to which you referred an answer to these communications?

A. That letter, in its public relation, merely acknowledges the receipt of two letters from me, and the arrival of a confidential messenger I sent to the President. It gives some directions, but generally conveys information merely.

Mr. Wickham then applied for the production of this letter; it might be important to Colonel Burr in this point of view. General Wilkinson sends on certain communications by Mr. Briggs, and in this letter the President acknowledges the receipt of them. So that, by referring to that letter, it was easy to know what were the communications made to the President by General Wilkinson.

Mr. Martin. We have a right to demand this letter.

Chief Justice. It is easy to read the passage

which refers to the two letters and to Mr. Briggs's communications.

Mr. Martin proposed to put the letter into the hands of the Chief Justice, who might mark such passages as he might think improper to be read.

General Wilkinson. The letter is in the hands of the attorney for the United States.

Mr. Hay. If the court will state those subjects to which the letter should relate to have any bearing on this case, I am ready to produce such passages.

Mr. Burr observed that he knew of but one ground on which a public document should be withheld from a court of justice, which was, that it might contain something relative to foreign negotiations actually pending, and the public good required its concealment. But, in the present case, the transactions referred to in the letter might have passed over; a letter, too, which is not a public document, but a private communication.

Mr. Martin. No Government ever dared to suppress information which was necessary to an individual against whom it had commenced a prosecution. There never was such an attempt to establish a new principle, as is done on the present occasion.

Mr. Hay. Mr. Martin asserts that there never was such an instance as the present, and that we are attempting to establish principles altogether new. I do not, sir, attempt to establish new principles; I do aver my confident opinion, that this paper does not, in the slightest degree, relate to the present case. I will not say that the gentlemen know this fact, nor do I say they have other objects in view; what effects they may have out of doors, what materials of declamation they may furnish to gentlemen of a certain way of thinking, I know not. But I do assure gentlemen, that when this letter is produced, it will have a very different effect from what they may contemplate.

[Mr. Hay then read the last paragraph of the letter.]

Mr. Burr. If there be a single sentence in that letter relating to me, I have a right to demand it. Why is greater regard paid to the President's secrets than to mine? My papers have been fraudulently seized, and such passages only culled from them as suited the purposes of my enemies.

Mr. Hay. I am placed in an embarrassing situation; I have no objection to the production of this paper; but, in my opinion, it has not the smallest application to the present case. If this letter ever is produced, it will but place the conduct of the President on that high ground of propriety which has ever been contemplated and assigned to him by the people of the United States. If gentlemen want this letter, let them state how it is relevant. I am content that you, sir, (the Chief Justice,) should read this letter, or that any other person should; but I cannot consent to produce every paper which gentlemen may think proper to ask for.

Mr. Wirt. These gentlemen, it seems, are carrying on an impeachment against the President of the United States. What is their object in demanding this letter? It is no more than vainly to attempt to inculpate the President, and to gratify their spleen and their resentment against him. Is that their object? Is Aaron Burr more or less guilty because he has approved or disapproved the measures of General Wilkinson? They want to ask you which is the most guilty, Thomas Jefferson or Aaron Burr? Are you, then, trying the President? And even if you were, would you not have him here, and give him an opportunity of answering to his accusers? This letter, sir, if ever it is produced, will show that the motives of the Administration were as pure and as proper as its friends could wish, or its enemies could fear; it will appear that the reprobated conduct of General Wilkinson, in this instance, was such as was justified by the circumstance of the case; and that if the Administration have approved it, they have approved of nothing but what was proper. We hope that, unless the court be satisfied of the relevancy of this paper, they will not unnecessarily violate the sanctity of private correspondence.

Mr. Wickham. It has been said that we wish to inculpate the Government. No, sir, our object is to defend ourselves; and if, in doing this, we do inculpate the Government, so much the worse for them. When, sir, the Government have spent $100,000 on this prosecution; when every quarter has been ransacked for evidence against us; is it not important for us to show from what motives this prosecution has been commenced? General Wilkinson has been under examination these two days. He has produced documents which he has mutilated and then restored. Gentlemen say that he is the pivot on which the prosecution turns. We wish, sir, to examine how far this witness has been consistent with himself, and what credit is due to his declarations.

Mr. Martin. It has been already decided in this court, that the President has no more rights here than the man who walks the streets in rags. "What!" says the gentleman, "will you then violate the sanctity of private correspondence?" Sir, when that gentleman made this declaration, I looked at his face to see whether it did not blush with shame, and even burst with blood, at expressing such a sentiment.

Mr. Wirt. I hope, sir, the redness of a man's face is no evidence of his guilt. Mr. Martin mistakes me. I demanded whether this court would violate the sanctity of correspondence, unless there was an adequate necessity for it.

The argument was continued for some time in this desultory manner; after which the Chief Justice observed, that he much regretted that any difficulty had occurred on the subject; that it was irksome to him, and it was with considerable reluctance that he required the production of such a paper; but that he did only what his duty prescribed to him; that it was impossible for him to determine, even if he saw the letter, how much of it was relevant to the present case, because he could not anticipate what ground of defence would be taken by the accused. He saw, however, no necessity for reading it in public.

Mr. Wickham. Let us see the letter, and then

if we think it to be relevant to the present case, we may read it in the cause; but no copy need be taken.

Mr. McRae. I should rather, sir, that it be exhibited in the most public form. It is the only way to avert the misrepresentation of its contents.

[Mr. McRae then read the letter marked Z.]

Mr. Wickham demanded the production of the whole letter of the 12th of November.

Q. General Wilkinson, did you lay it before the grand jury?

A. I did.

Mr. Burr. The entire letter has been used against me before the grand jury. All idea of State secrets is therefore at end; and there can be no objections to produce the whole of it in court. I shall expect that General Wilkinson will bring the whole of it into court to-morrow.

Mr. Hay. I have nothing, sir, to say on this subject.

Chief Justice. The President has certified his reasons for communicating only certain parts of that letter; and he believes that the other parts have no application to the present prosecution.

Mr. Martin. I hope the court has not already decided that point. Has not this court already declared that the President has no more power here than any other man? If this be law, for which gentlemen now contend, God forbid that I should remain a citizen of the United States! And is Mr. Jefferson to be a judge of the relevancy of evidence, in a prosecution in which he has taken so active a part against the accused? Mr. Jefferson, sir, is a man of no great legal knowledge. He was of no celebrity as a lawyer before the Revolution, and he has since been so much engaged in political pursuits, that he has had time enough to unlearn the little law he ever knew.

Mr. Hay. The only end of this conversation is to abuse Mr. Jefferson.

Mr. Martin. Sir, we shall so use Mr. Jefferson as not to abuse him. Remember that the life and liberty of Colonel Burr are shown to be no longer dependent on Virginians, and therefore I am freed from any restraint in declaring what I think. If Mr. Jefferson himself were here, would not this court call him before it, and make him disclose, upon oath, the contents of that letter? Suppose, sir, that in this letter General Wilkinson has denounced Governor Claiborne and Cowles Meade; suppose that he has represented all the people of New Orleans as disaffected; suppose that he has attempted to throw every influential man but himself under the suspicions of the Government, in order that he may raise himself into favor; is this a satisfactory reason why this letter should be respected or withheld?

Mr. Burr repeated that this letter had been laid before the grand jury; that it was, therefore, no longer a State secret; and that he had a *right* to ask for anything which General Wilkinson had showed or said to the grand jury.

Chief Justice. After such a certificate from the President of the United States as has been received, I cannot direct the production of those parts of the letter, without sufficient evidence of their being relevant to the present prosecution. I should suppose, however, that the same source, which informed you of the existence of this paper, might inform you of the particular way in which it was relevant.

Mr. Burr. In such a case, I ask no man's opinion but my own.

Chief Justice. I cannot assist you.

Mr. Burr. Have not I a right to ask what any one said before the grand jury?

Mr. Wickham read certain parts of the *extracted, and furnished* copy, to show that, from the context of those parts, the omitted passages bore directly on the subject. The President of the United States might have had proper reasons, on account of General Wilkinson, to withhold those parts, but General Wilkinson himself has no right to withhold them; and if he produced the whole letter before the grand jury, for the sake of criminating Colonel Burr, he may certainly be called upon to lay it before this court.

General Wilkinson begged leave to correct the expression of the gentleman about his motives. He did not produce this letter before the grand jury to criminate Colonel Burr, but to vindicate himself.

Mr. Wickham. That is the very thing which I say. Why did he wish to vindicate himself, but to give greater effect to his crimination of Colonel Burr?

General Wilkinson begged leave to state another consideration. When he appeared before the grand jury, he recollects Mr. Taylor of the grand jury inquired of him, whether he introduced certain papers to vindicate his own conduct, and that he replied in the affirmative; he remembers, also, observing to the grand jury, that certain parts of his informations involved such delicate personalities, that he should not willingly give it publicity; and therefore he hoped what he said would be received in confidence; to which a member, (Mr. Barbour,) after some pause, replied, "Whatever you say here, sir, is received in confidence."

Mr. Hay. Mr. Tazewell is here, and will confirm that statement.

Mr. Burr. Then they did a very improper thing; and I hope this court will not countenance such a proceeding. The gentleman must be mistaken, sir. The grand jury could not thus receive secret information.

Mr. Hay observed that gentlemen acted very precipitately in condemning the grand jury unheard; and appealed to Mr. Tazewell for what he knew on this subject.

Mr. Burr. They have no right to introduce a witness now, when we have one under examination.

Mr. Wirt supposed that, when the grand jury was thus charged by the accused or his counsel, they had a right to appear in vindication of their own conduct.

Mr. Burr. That may be pleasant occupation to the court *hereafter*; but at present we have a witness under examination.

After a long and desultory argument, the Chief

Justice determined that the correct course was, to leave the accused all the advantages which he might derive from the parts actually produced; and to allow him all the advantages of *supposing* that the omitted parts related to any particular point. The accused may avail himself of them as much as if they were actually produced.

Mr. Wickham. We shall then insist, in the course of argument, that our suppositions, if not disproved, must be received as evidence.

Mr. Martin. And I shall take the liberty of stating what is actually contained in the omitted parts of the letter; for I know what they are.

Mr. Wirt. Mr. Martin, sir, is privileged to say what he pleases of any person or thing.

Mr. Burr (to General Wilkinson.) Was there not an order given by you to seize the person of Mr. Pintard?

A. I have no recollection that I gave such orders; and I conclude, from the circumstance of an explanation I made in the newspapers, that I did not.

Mr. Burr. I have seen an order, said to have been from you, for seizing him?

A. I do not recollect it; but if any such is shown to me, I shall certainly confess it.

Q. Did you give any orders to arrest Daverzac?

A. I gave orders only; I stationed a guard about two miles above New Orleans, to stop boats and persons.

Q. What were the orders given to that guard?

A. To stop all persons descending the river.

Q. And to seize papers too?

A. I do not recollect.

Q. Were the papers of Mr. Pintard brought to you?

A. They were, but they were immediately returned.

Mr. Hay. Is it the opinion of the court that General Wilkinson is to be interrogated about all his transactions at New Orleans? I objected not to hearing the truth, but I cannot consent to this sacrifice and waste of time. I believe it to be a principle of law, that, when a witness is introduced by the prosecution, he is only to be cross-examined about the points of his original testimony. Is this prosecution never to end? Or are we to wait to give the accused an opportunity of entrapping General Wilkinson, which they avow to be the object of these interrogatories?

Mr. Wickham. It is a novel idea just started by the gentleman. If such were the law, the prosecution need only to seize on the most material witness on behalf of the accused, examine him only as to a few points, and then dismiss him. All his evidence in favor of the accused would, consequently, be lost.

Mr. Hay. The law is laid down in 2d Atkins.

The Chief Justice overruled the objection, and the examination proceeded.

Mr. Burr. What letters directed to me did you take from Pintard or Daverzac? A. None.

Q. Did you return to those gentlemen all the papers you took from them?

A. I think I did not; but I do not recollect what part of them I retained.

Q. You have read the Constitution; by what authority did you seize private papers?

General Wilkinson (to the court.) Am I bound to answer questions which may criminate myself?

Mr. Burr. To state the authority by which he seized the papers cannot criminate him, though the fact of seizing might.

Chief Justice (to General W.) When you discover that any question may criminate you, you need not answer it.

Mr. Baker. And when he does resort to that expedient, he is to be understood as shuffling from the question, and is likely to criminate himself by his answers.

Mr. Wirt. And it is also understood that when called on in this manner, he may explain his conduct by drawing a picture of the defenceless condition in which he found New Orleans, and the necessity of resorting to such strong measures for its defence.

Mr. Baker. And if he does give us a picture, it must be a true and faithful one.

Chief Justice. I have stated to General Wilkinson that he is at liberty to explain the motives of his conduct.

General Wilkinson. Then, sir, I will explain and substantiate the motives of my placing this guard, and of my other measures. Here is a paper, a letter of advice from General Jackson to Governor Claiborne, warning him of the approach of a large body of men to New Orleans, combined and engaged for unlawful purposes. Here, sir, is a deposition which goes to show that Judge Prevost, the step-son of Colonel Burr, saluted a public officer in the streets of Orleans, and congratulated him on the arrival of General John Adair, as the second in command to Colonel Burr, at New Orleans. Here is a deposition of Commodore Shaw, which shows that Bradford, the printer, had reported a most terrific account of the movements in the upper country, of an armed brig being equipped, and even of 12,000 stands of arms being issued by Colonel Burr. These were the reasons for my taking such decided steps; and so impressed was I with the dangerous situation of my country, that, if I had omitted these precautionary measures, I should have deserved the severest denunciations of the Government. I was prompted by that pure patriotism which has always influenced my conduct, and my character for which I trust will never be tarnished. I shall continue to defy the utmost art, fraud, deception, and villany that my enemies can practise towards me.

Mr. Wickham objected to the production of the depositions.

After a desultory argument, the Chief Justice determined that it was not correct to read them. If these affidavits had been made previous to the transactions at New Orleans, they might have been read as explanatory of the grounds of General W.'s conduct; but, being taken since, they are objectionable, as every thing of that kind ought to be subjected to a cross-examination. General Wilkinson has stated the grounds of his

own conduct, and very properly; but he has no right to support his explanation by illegal evidence.

Mr. Baker. The court having disposed of the depositions, the only question that remains relates to the letter. On this question two points occur: 1st, whether this is a correct copy of a certain letter; and, 2dly, whether that letter was written by General Jackson.

Chief Justice (to General Wilkinson.) Do you know the handwriting of General Jackson?

A. I know it only by comparison; I never saw him write.

Mr. Wickham. Did you compare this letter?

A. My clerk did, and he is here.

Mr. McRae. Is it not your best belief that this is a true copy of the original?

A. I believe it to be a correct copy.

Q. Did not this letter form the ground, in part, of your conduct?

A. It did certainly influence my conduct.

Mr. Wickham objected to its being read, because it was only proved to be a true copy by the general recollection of the witness.

Some desultory discussion ensued.

Chief Justice. Both sides admit that it is immaterial whether General Wilkinson's impressions of the state of New Orleans were actually true or false. Both sides admit that he may produce any letter which is verified by himself. But this copy is not proved by him to be a true copy. There is no objection to General Wilkinson's stating the contents of this letter; but that statement cannot be confirmed by the copy that is offered.

Mr. Wickham. There is one thing more to be considered. The court has not come to any positive decision as to the letter of 12th November. If General Wilkinson does not produce the omitted parts, by the rules of evidence we are at liberty to state and to use them, until they are disproved. General Wilkinson may, if he pleases, produce the whole letter at any subsequent period.

Mr. Hay. The President of the United States has prescribed the course which should be pursued. It is he, and not General Wilkinson, who withholds the omitted parts. Is it fair, then, that the opposite counsel should supply these omissions as they please, and that their suppositions should be received as evidence?

Chief Justice. I have already decided this question. It is certainly fair to supply the omitted parts by suppositions, though such ought not to affect General Wilkinson's private character. If this were a trial in chief, I should, perhaps, think myself bound to continue the cause, on account of the withholding the parts of this paper; and I certainly cannot exclude the inferences which gentlemen may draw from the omissions.

General Wilkinson. I have to offer, sir, a letter from James L. Donaldson, which Mr. Martin called for yesterday.

Mr. Martin. This is only an extract.

General Wilkinson. I had no other.

Mr. Martin, (returning the paper.) We take no extracts.

Mr. Wirt, (in an under key.) Unless it be of molasses.

General Wilkinson. I have also another paper; it is the extract of a letter from Mr. Covington, showing that the cipher was invented in 1794.

Mr. Wickham. Did you ever use these ciphers, or any of them, or any other cipher, in correspondence with the Baron Carondelet?

A. No; but I must reflect on that question before I answer it decidedly.

SATURDAY, *October* 3.

Mr. Martin. You offered an extract of your instructions to Lieutenant Pike yesterday; we wish to see them.

General Wilkinson. I have now in my hand a complete copy of these instructions. If they are admitted, I wish them to be read. [They were received and deposited with the clerk.] Mr. Martin had asked me yesterday respecting the information which Major Bruff had given to General Smith and Mr. Read, of the Senate. I have a copy of it. Here it is.

Mr. Martin. We only want to know when it was received.

Answer. I do not recollect; it was dated on the 1st of March, 1807, at the City of Washington.

Mr. Martin. Then it could have no influence on your conduct at New Orleans. We do not want the paper. [See note A A.]

General Wilkinson said that this same Major Bruff had been summoned here as a witness by Colonel Burr, to take revenge, as he had alleged, for past injuries.

Colonel Burr asked whether this was offered as testimony?

General Wilkinson. No; I only offer what I can prove.

Colonel Burr said that, if General Wilkinson had any further evidence to give, he would go on with it. But these appeared to be mere conversations, and he did not know whether dictated by passion or not.

General Wilkinson, (addressing the Judge.) I stand here in a very complex character. On the one hand, summoned as a witness on the part of the United States; on the other, arraigned as an offender by Colonel Burr and his counsel. I therefore hope that, should I commit any impropriety, it will be ascribed to the peculiarity of my situation.

Mr. Wickham. I ask you if you had any communications with Timothy Kibby, and whether you had ever made any propositions to him as to an invasion of Mexico?

A. I cannot charge my recollection. There was a very general idea that hostilities with Spain would certainly take place. It is possible that I might have spoken to him, as an officer of the militia, with respect to the probable force which he could bring into the field in case of such an event.

Q. Have you ever made any confidential communications to him or to any other person on that subject?

A. I am not conscious that I ever did.

General Wilkinson, having been informed that there were no more questions to be propounded to

him, addressed the judge as follows: Upon a former occasion, you will recollect, sir, that reference has been made to a certain letter of which so much has been said. That letter is designated by the words said to be used in it, "yours, postmarked the 13th of May, has been received." Yet that letter has been withheld, under the pretext of delicacy; while we have seen it employed in the most artful and insidious manner to injure my reputation and tarnish my fame. Sir, I demand the production of that letter. I hope that a reputation acquired by nearly thirty years of service is not to be filched from me by the subtlety, artifice, or fraud of Colonel Burr and his counsel. I hope that, on Monday next, you will permit me to introduce a variety of letters and documents explanatory of the insinuations and inuendoes which are calculated to implicate me as an accessory in his plans. A member of the grand jury has been brought forward to state what my evidence was; which is an additional reason why I should be permitted to explain. It was my intention to have commenced my testimony by giving a regular detail of the proceedings of Colonel Burr from his first passage of the mountains, but I have been advised to confine myself to a narration of the occurrences which commenced at Natchitoches. It is now my duty to go back to that period, and trace Colonel Burr step by step.

The Chief Justice said that the court could not hit to hear anything except what related to the cause. As to the intention with which Gen. Wilkinson had done any particular act, he had been permitted to explain, in the whole course of his testimony. With respect to what had been drawn from Mr. Tazewell, as he understood it, there was no variation between his statement and that of General Wilkinson. The papers which General Wilkinson wished to refer to had as well appear before the public in any other way as through the channel of this court.

Mr. McRae said he did not know that General Wilkinson had gone so fully into the explanation of the various parts of his evidence as he intended. He had understood the court to say, that General Wilkinson might be permitted to explain himself as to any particular fact mentioned in the course of his testimony. It is the wish of General Wilkinson, on every occasion, to explain the motives which governed him; and if in some points he has not been so full as he intended, he hoped that the court would still hear him.

Mr. Wickham. General Wilkinson must necessarily stand in a very delicate situation. Very heavy charges are brought against Colonel Burr, which are attempted to be established by the testimony of General Wilkinson. It must have been foreseen that the counsel of Colonel Burr, if they did their duty, would endeavor to impeach the credibility of General Wilkinson as a witness. But this is a common case. It is a thing which may happen in the case of every witness who is brought before the court. A witness is brought forward on whose testimony much reliance is placed. He is, of course, cross-examined to see whether he be consistent with himself, or whether his credibility can be impeached. In the present case, I am certain that General Wilkinson has been treated with every degree of delicacy which the nature of the case would admit of. With respect to myself, I am conscious of having done nothing but what my duty dictated, and of having used as much delicacy towards General Wilkinson as his relation would justify. We do not see the necessity or propriety of General Wilkinson's entering into explanations. If these are to be made, they had better be reserved for some other time, and some other place.

Colonel Burr. General Wilkinson has been sworn to tell the truth, the whole truth, and nothing but the truth. If he has not told the truth, let him do it now; and not, by his explanations, interrupt the examination of other witnesses.

General Wilkinson. I have received, and have now in my possession, a number of letters from Colonel Burr, of an ambiguous nature, combining matters personal with matters political; but they contain nothing which would subject him to legal penalty or legal obstruction. I have before observed, that under the circumstances in which these letters were received, I did not feel myself at liberty to divulge their contents without the permission of Colonel Burr. I now ask that permission, for I feel that delicacy which others profess to feel. The letter post marked the 13th of May, has often been mentioned, and has been used to injure my character, and envelope it in doubts and suspicions. This letter, if written at all, must have been in answer to one received from Colonel Burr. Why has it not been produced? I challenge its production; for if it were brought forward, it would release me from all obligation to silence, and would enable me to exhibit to public view the letters of Colonel Burr. Sir, I am incapable of uttering an intentional falsehood; and, under the solemnity of the oath which I have taken, I have no hesitation in saying that the declaration of that gentleman (pointing to Colonel Burr) that he had put the letter beyond his power and with my knowledge, is totally destitute of truth.

A A.

WASHINGTON, *March* 1, 1807.

Major Bruff communicated to S. S. and Colonel Read:

That Judge Easton, (immediately after the first number of the Western World appeared,) told him (Bruff) that it was in his power to ruin Colonel Burr; that he had told him his plans; that they were such as had made his hair stand on end, but he had gone so far that he could not recede. Bruff told him, that he owed it to himself, as an honest man, to inform Government. That I cannot do, said E., for I am under an oath of secrecy. But you had previously taken an oath, paramount to any other, to your country; I cannot tell, said E., but I will communicate the whole to you, if you will come under an oath of secrecy; indeed, continued he, Colonel Burr told me, that he had heard of you, that he had heard you was a brave man, had sense and firmness, and desired me to

speak to you. I am therefore at liberty to tell you all the plans, if you will swear that you will keep the secret. Bruff refused, and advised Easton to act like a man of honor and a friend to his country, or he would hereafter repent.

Evidence of Commodore Shaw.

FRIDAY, *October* 2.

Mr. Wickham. For what is Commodore Shaw introduced?

Mr. Hay. To authenticate the copy of the letter from General Jackson to Governor Claiborne, shown to General Wilkinson.

Commodore Shaw. I recollect to have seen the original.

Mr. Wickham. You will please, sir, to state its contents.

Commodore Shaw. Governor Claiborne sent his servant to me with an invitation to dinner; adding that he wished to see me on public business. I was unable to wait upon him that day; but I saw him on a subsequent day, when he took a letter from his pocket and showed it to me. It was a letter from General Jackson to himself, and had been thrown into the office by some anonymous person. This letter gave Governor Claiborne a strong suspicion of General Wilkinson and reminded him of the *ides of March*, and insisted upon the necessity of placing New Orleans in a state of defence.

Chief Justice. When was this?

A. Some time in December.

Chief Justice. Did report convey any information of troops approaching New Orleans?

A. Yes. Every day in December and January rumors were arriving of the movements of troops on our southwestern frontiers; and my impression was, that everything should be done for the safety of the city; and that if General Wilkinson had not taken the measures that he did, he would have deserved censure.

Mr. McRae, (looking in the letter in his hand.) Do you recollect whether General Jackson recommended in his letter, that the Governor should use every possible means of defence?

Mr. Wickham objected to putting questions from the letter.

Chief Justice. You must not, sir, take the letter in your hand, and propose questions from it. It is really of no consequence whether the letter be read or not. No doubt the substance of it has been stated.

Mr. McRae. Have I no right to read over the letter, and afterwards to interrogate the witness as to its substance? It is my object, I confess, to draw out the substance of the original letter.

Mr. Wickham. In that letter were there not strong suspicions expressed against General Wilkinson?

A. There were.

Mr. Wickham. I should suppose, then, that General Wilkinson might have easily judged from that circumstance of the correctness of the rumors which were circulated about Colonel Burr.

Mr. McRae. State, sir, what you know of these transactions.

A. The alarm at New Orleans in December and January was very considerable. We did not know when the enemy would advance upon us. There was an apprehension of an attack by sea, and I was then authorized to purchase a large ship, to be stationed at the Balize. The gunboats, which had been ordered to enter Lake Pontchartrain, were commanded to take a different position. Some time after there was a report that a fleet, under English colors, was actually cruising off the mouth of the Mississippi; and this increased the alarm?

Mr. Burr. Was it a fact or not that this fleet was there?

A. I do not know. Such was the report, and it was brought by a packet which comes up weekly from the Balize. It was not said to be a fleet of merchantmen, but of ships of war. The report was, I believe, on the custom-house books. Mr. Bradford, the printer, also made a communication to me on the 6th of January, which produced a considerable effect. He informed me that he had spent some time in the city of Washington and Philadelphia; and from Philadelphia he had travelled to Pittsburg, and from thence proceeded to New Orleans; that he had seen a number of men under arms at the mouth of Cumberland river; two gunboats building, which the men at work on board told him would be delivered up by Colonel Lyon to Colonel Burr; besides a number of small arms, and a thirty-two pounder, ready to go aboard; and that this flotilla was to be under the command of Captain Talbot.

Mr. McRae. Did this information reach General Wilkinson?

A. Yes. I told him of it myself. The communication was made in the company of Mr. Haynes and Major Spence.

Mr. Wirt. What was the situation of New Orleans at that time? was it in a condition to defend itself against any attack by sea?

A. It was in a very defenceless condition.

Mr. Wickham. Were these rumors before General Wilkinson's arrival at New Orleans, or afterwards?

A. Afterwards. General Wilkinson made to me a full communication of all he knew; I dare say, a week before it was known to the public. He showed me the ciphered letter from General Dayton, with his signature to it. This enabled me the sooner to get my naval preparations ready.

Mr. Hay. Did General Wilkinson give you this information under injunctions to keep it secret until the proper time should come for divulging it?

A. He did; until he could obtain more complete information from some of Colonel Burr's agents then in town.

Mr. Hay. Was Colonel Freeman then at New Orleans? A. He was.

Mr. Wirt. What was the strength of the garrison in New Orleans?

A. In the upper fort there were two three pounders and one twenty-four pounder. All the guns in the lower fort were dismantled. In the upper fort there were six men and a corporal's guard. I am sure there were not more than three guns there.

Mr. Wirt. What was the number of regular men in garrison?

A. It was a small garrison. Generally there were parts of four companies of regulars there. What was the precise number of men I do not recollect.

Mr. Hay. Did not those who were responsible for the safety of New Orleans suspect many of disaffection?

A. I did suppose there were many in and near New Orleans who were inimical to the Government of the United States.

Mr. Wirt. Suppose an attack had been made by a fleet from below and an army from above, would the people of the city have resisted with a proper spirit?

A. I thought, sir, that the people were not as patriotic as they ought to have been. Many endeavored to discourage the belief that there was any danger of an attack.

Cross-examined.

Mr. Wickham. Did General Wilkinson show you the ciphered letter?

A. Yes; in manuscript.

Q. Did he show you the translation?

A. He did.

Q. Was it General Wilkinson's copy?

A. I so understood it.

Q. As a copy of the whole letter?

A. Yes; as the true copy of the whole letter received by General Wilkinson through Mr. Swartwout.

Q. Did you say there were four companies of regulars at New Orleans?

A. I said they were not full.

Q. Was there any alarm before General Wilkinson got down?

A. None that I heard of.

Mr. Wickham. Did you suspect the people of New Orleans to be disaffected because they would not believe these rumors?

A. No; not for that reason. I believed them disaffected for other reasons.

Mr. Wickham. Whilst these rumors prevailed, did the ordinary commerce of the flat-bottomed boats coming down the river continue? A. It did.

Q. Did the mails arrive as usual?

A. They were not regular in January. I thought some of my letters were detained, and I then determined to communicate with the Government by water.

Q. Did you obey any orders from General Wilkinson?

A. No; our service was quite distinct; but I had orders to co-operate with General Wilkinson, and he might send the squadron to what point he pleased.

Q. Who gave you the orders to apprehend Colonel Burr?

A. They were from Government, and I think from General Wilkinson. My orders from the Government have been published, and I suppose Colonel Burr may have seen them in Natchez. The original orders are at my lodgings.

[Here Mr. Hay produced a copy of these orders.]

Mr. Burr. That is not the order, Commodore Shaw, which was published at Natchez?

A. [Having read it.] The very same sir, verbatim.

Q. Did you not see an order in the newspapers directing my boats to be destroyed, &c.?

A. I did not, sir. These orders (those in his hand) were put on the custom-house books.

Mr. Burr. Was there any qualification "if attacked," in the order that was published?

A. There was.

Q. Was it not an order to attack and destroy, without any qualification?

A. Oh, no, sir.

Documents referred to in Gen. Wilkinson's Evidence.

A.

Deposition of Colonel Cushing.

On or about the 8th of October, 1806, I was sitting at the dining-table, in my quarters at Natchitoches, with General Wilkinson, when a gentleman entered the room and inquired for Colonel Cushing. I rose to receive him, and he presented to me the letter from General Dayton, of which the following is an exact copy, viz:

ELIZABETHTOWN, N. J., *July* 27, 1806.

DEAR SIR: This will be presented to you by my nephew, a son of the late General Matthias Ogden, who commanded one of the Jersey regiments in the Revolutionary war, and whom you probably recollect. He is on his way to New Orleans, and is advised by me to call at your post, if it should be at Fort Adams, or elsewhere upon the Mississippi, as I am told it is. His merits, and the esteem in which he is held by me, make me anxious to procure for him a welcome reception, even for the short stay of a few hours that he will be able to make with you.

Any instance of friendly attention or assistance shown to him and his very worthy companion, Mr. Swartwout, will be gratefully acknowledged, and regarded as a favor conferred on

Dear Sir, your sincere and very humble servant, JONATHAN DAYTON.

Colonel CUSHING.

The gentleman informed me that he was the Mr. Swartwout mentioned in the letter, and I presented him to General Wilkinson as the friend of General Dayton, and requested him to take a seat with us at the table, which he did. Mr. Swartwout then observed that Mr. Ogden and himself, being on their way to New Orleans, had learned at Fort Adams that our troops and some militia were assembling at Natchitoches, from whence they were to march against the Spanish army then in our neighborhood, and that the object of his visit was to act with us as a volunteer. He remained with us some time, and conversed on various topics, but said nothing which could excite a suspicion against him; and he left us with a strong impression on my mind that his business to New Orleans was of a commercial nature, and could be conducted by Mr. Ogden during his absence. While he was in my quar-

ters I was called out on business, and was absent from five to ten minutes.

The next morning I was walking on the gallery in front of my quarters, when General Wilkinson came up, and taking me aside, informed me that he had something of a very serious nature to communicate to me; so much so, that, although it was necessary to hold it in strict reserve for the present, he begged me to bear it in mind, that I might be able to make a fair statement of it at any future period. He then asked me if I knew or had heard of an enterprise being on foot in the Western States. I replied that I had heard nothing on the subject, and asked him what the enterprise was to which he alluded. He then said, "Yes, my friend, a great number of individuals possessing wealth, popularity, and talents, are at this moment associated for purposes inimical to the Government of the United States. Colonel Burr is at their head, and the young gentleman who delivered you the letter last evening is one of his emissaries. The story of serving as a volunteer is only a mask. He has brought me a letter from Colonel Burr, which, being in cipher, I have not yet been able fully to make out; but I have discovered that his object is treasonable, and that it is my duty to oppose him by every means in my power. He assures me that he has funds—says the Navy are with him—offers to make me second in command, and to give the officers of the Army anything I may ask for them; and he requests me to send a confidential friend to confer with him at Nashville, in Tennessee. In fact, he seems to calculate on me and the Army as ready to join him." I then asked the General whether he had received any information or instruction on this subject from Government; to which he replied that he had not, and that he must therefore adopt such measures as in his judgment were best calculated to defend the country. He said he would immediately march to the Sabine, and endeavor to make such terms with the Spanish commander as would justify him in removing the greater part of his force to the Mississippi; and that the moment this should be effected, he would send me to New Orleans in a light barge, with orders to secure the French train of artillery at that post, and to put the place in the best possible situation for defence; and that he would follow, with every man that could be spared from Natchitoches, with all possible expedition. He told me that he would give the information he had received to the President of the United States, and solicit particular instructions for his government. But, as delay might prove ruinous, he would pursue the course before suggested, as the only means in his power to save the country, until the pleasure of the President could be known. On our march to the Sabine, the General told me that he thought his presence at New Orleans at as early a period as possible was absolutely necessary, and that the moment he could make terms with the Spanish commander he would set out for that place, and leave me to bring on the troops. T. H. CUSHING,

Col. 2d Reg't Inf'y, &c.

NATCHITOCHES, *Nov.* 15, 1806.

Sworn to before me, at the city of New Orleans, this 20th day of May, 1807.

GEO. POLLOCK,
J. P., Parish of Orleans.

B.

PHILADELPHIA, *July* 25, 1806.

DEAR SIR: Mr. Swartwout, the brother of Colonel S. of New York, being on his way down the Mississippi, and presuming that he may pass you at some post on the river, has requested of me a letter of introduction, which I give with pleasure, as he is a most amiable young man, and highly respectable, from his character and connexions. I pray you to afford him any friendly offices which his situation may require, and beg you to pardon the trouble which this may give you.

With entire respect, your friend and obedient servant,

A. BURR.

His Exc'y GEN. WILKINSON.

C.

Copy of a letter from General Dayton to General Wilkinson, written in cipher, except those parts printed in italics. This cipher was designed by General Dayton, and founded on the hieroglyphics known to General Wilkinson and Colonel Burr.

JULY 24, 1806.

X Λ ! .) O ◡ / ⏤ ⌒ " V ⌒ — O- IV"

[ ]

It is now well ascertained that you are to be displaced in next session. Jefferson will affect to yield reluctantly to the public sentiment, but yield he will. Prepare yourself, therefore, for it. You know the rest.

You are not a man to despair, or even despond, especially when such prospects offer in another quarter. Are you ready? Are your numerous associates ready? Wealth and glory—Louisiana and Mexico. *I shall have time to receive a letter from you before I set out for Ohio*—OHIO. *Address one to me here, and another to me in* Cincinnati. *Receive and treat my* nephew *affectionately, as you would receive your friend*

DAYTON.

[.]

D.

SIR: I have concluded to undertake the land *purchose* which we *talket* of last winter, and *determinet* to go on the lands this fall—any number of settlers could be had on this side the mountains, but I should *prefor* to have the greater part from the Western country. You promised to write about the horses, but have heard nothing from you, and suppose there will be no difficulty on that head. The money for the first payment is now ready. I shall be *att* Frankfort *abouth* the 15th *Augus*, and hope then to meet you and Colonel Lynch there; it is quite necessary that I should see Lynch, as I shall be provided with cash to go on vigorously with our speculation. Some of the concerned are now on their way to see you, and will be with you

nearly as soon as this letter. Please to encourage them, and give them a good account of things.

Your humble servant,

A. STEPHENS.

JOHNN PETERS, Esq. *Nashville.*

Letter from Dr. Bollman to General Wilkinson.

NEW ORLEANS, *Sept.* 27, 1806.

SIR: I have the honor to forward to your Excellency the enclosed letters, which I was charged to deliver to you by our mutual friend.

I shall remain for some time at this place, and should be glad to learn where and when I may have the pleasure of an interview with you. Have the goodness to inform me of it, and please to direct your letter to me, to the care of Messrs. Chew and Relf, or enclose under cover to them.

I have the honor to be, with great respect, sir, your Excellency's most obedient servant,

ERICK BOLLMAN.

General WILKINSON.

E.

JULY 16, 1807.

MY DEAR FRIEND: As you are said to have removed your headquarters down the river, and there is a report that the Spaniards intercept our mails which pass necessarily through the territory occupied by them, in order to reach you, I think proper to address you in cipher, that the contents may be concealed from the Dons, if they shall make so free as to open the letter. Take the following for the catchword or check-word, and you may very readily decipher the figures, viz: in your own hieroglyphics [.]; but in your alphabet thus:

[Hieroglyphics.]

V ⌒ — O I Λ

Everything, and even Heaven itself, appears to have conspired to prepare the train for a grand explosion; are you also ready? For I know you flinch not when a great object is in view. Your present is more favorable than your late position; and as you can retain it without suspicion or alarm, you ought, by no means, to retire from it until your friends join in December, somewhere on the river Mississippi. Under the auspices of Burr and Wilkinson, I shall be happy to engage; and when the time arrives, you will find me near you.

Write and inform me by first mail what may be expected from you and your associates. In an enterprise of such moment, considerations even stronger than those of affection impel me to desire your cordial co-operation and active support.

DAYTON.

Wealth and honor.
Adieu!
Courage and union. } BURR AND WILKINSON.

Let me hear from you by mail, as well as by the first good private conveyance, and believe me, with the best wishes for your prosperity and happiness, most truly, your friend and servant,

JONA. DAYTON.

If you write in cipher, use the same word, viz:

V ⌒ — O I Λ

F.

Extract of a letter from Jas. L. Donaldson, Esq., to General James Wilkinson.

NATCHEZ, *October* 30, 1806.

Michael Myers arrived here to-day in thirteen days from St. Louis, on his way to New Orleans. He made a communication to me, with permission to transmit to you, which might stagger even credulity. On his information, he says he is certain, and firmly believes in the intelligence he communicates. This is neither more nor less than that a plan to revolutionize the Western country has been been formed, matured, and is ready to explode; that Kentucky, Ohio, Tennessee, Orleans, and Indiana, are combined to declare themselves independent on the 15th November; that proposals have been made to some of the most influential characters at St. Louis, by an accredited agent of the conspiracy, to join in the plan; that this person, whose name Myers refuses to reveal, is in a most respectable line of life, and had the most unquestionable vouchers of his mission in French and English; that he declared if *money* was necessary, that it might be commanded to any extent.

It is proper to add that the persons thus applied to at St. Louis altogether refused to concur in any plan of the kind, saying that it should be only superior force that should dispense with their oath of fidelity to the United States. This may all appear to a person, as well acquainted as you are with the politics of the Western country, as a *second Spanish conspiracy*, and as such be ridiculed; and such is my impression of the wonderful plan. But Myers so firmly believed it, that, having set forth on his journey by land to the United States, he was induced by his fears hastily to return to arrange his business at all events, and prepare for an explosion. He most solemnly protests the truth of the communication, and declares there are only four persons in St. Louis who are privy to the disclosures made by the secret agent. It is not improbable that this may be a *ruse de guerre*, a stratagem set on foot by the patron of the Western World, to foster and keep alive the dissensions, which, excited by the pretended exposition of ancient conspiracies, may be fanned into a flame, by spreading an alarm of an immediate and pressing treasonable combination. This I am apt to believe is the case; and, in order more fully to succeed, they may study and affect mystery, as better calculated to excite suspicion, and that they may have the honor of a *new discovery*. However, be the matter as it may, I communicate it to you as I received it, and have only to regret that you had it not in person from Myers's information, of which, whatever your judgment might pronounce, the solemnity of his assertion, and his certainty of the plan, (although he was not at liberty to divulge the means,) must have staggered the mind capable of *believing it.*

G.

NEW ORLEANS, *November* 25, 1806.

SIR: Your letter of the 6th instant has been

duly received. Supposing that you will be much engaged this morning, I defer waiting on your Excellency till you will be pleased to inform me of the time when it will be convenient to you to see me.

I remain, with great respect, your Excellency's most obedient servant,

ERICK BOLLMAN.

His Excellency Gen. Wilkinson, Fauxbough Marigny, the house between Madame Frevigne and Mlle. McCarty.

H.

The deposition of A. L. Duncan, a witness in behalf of the United States against Aaron Burr, taken at the request of said witness, but by the consent of George Hay, Esq., attorney for the United States in the district of Virginia, and of the said Aaron Burr, to be read in evidence, if required, on all trials, motions, or other proceedings in course of law, in which the said Aaron Burr shall be concerned, at the prosecution of the said United States.

I consent that this affidavit may be read in all cases in which the United States are concerned against Aaron Burr, in the same manner as above expressed.

GEO. HAY, *U. S. Attorney for Virginia district.*

During the commotions excited in New Orleans last winter by what was termed Colonel Burr's conspiracy and his associates and accomplices in that place, I was called upon in my professional capacity by General Wilkinson for counsel and advice in some measures which he was about to adopt. The temper and disposition which I had discovered in New Orleans, and the reports which daily reached that city from above, induced the belief that half measures were not suited to the times, and that the public safety required the exertion of extraordinary energies. I therefore urged the General repeatedly to the seizure of suspected persons, and the declaration of martial law. When Bollman was seized, I suggested to the General the expediency of transmitting with him a statement of facts, on oath, to justify the step, and to warrant his commitment. He then put the letters which he said were written to him by Colonel Burr, and which he also said were transmitted to him by Swartwout and Bollman, into my hands, on which, together with some further information and knowledge of their views which the General possessed, I framed the deposition which accompanied Bollman, intentionally omitting everything which was calculated to inculpate the General, or which might, by exciting suspicions, have a tendency to weaken his testimony. Having prepared the deposition, I presented it to General Wilkinson to be deposed to, who strongly and repeatedly objected to the omission I had made, and urged warmly that the whole should be introduced. He also desired that a declaration of Bollman, with which he frequently interlarded his conversation, should be entered, viz: "That he had come to New Orleans with views to the settlement of lands on the Washita, and was a mere spectator." And it was only after a full exposition of the sole objects of the document, that I could prevail on him to depose to it. It is idle and absurd to impute any sinister intention to the omission, because, on any trial which might ensue, it was known the original documents must be introduced as they have been. I recollect, during the winter, General Wilkinson was called before the Legislature of the Territory to give an account of the state of public affairs, and he informed me he had intended to submit to their inspection Colonel Burr's duplicate, he having erased such parts as had been intended to implicate him, as he knew several of the members, and particularly the Speaker, to be interested in opposition to his measures, and for the promotion of such a state of things as were best calculated to favor Colonel Burr's enterprise. I understand that the erasure made on this duplicate was but partial, the General having determined to give oral information to the Legislature, which employed him two successive days; and that he considered the duplicate unimportant, (whilst the original has been preserved untouched,) excepting the short paragraph relative to Bollman, which is preserved in its original state, and the only words erased, "Your letter, post-marked 13th May, is received," have been re-inserted in the General's own hand. On or about the 15th August, since my arrival in this city, General Wilkinson put into my hands, and those of J. L. Donaldson, Esq. four or five letters, observing to us: "I submit to you those letters which I have not examined since I left St. Louis; they are from Colonel Burr; I do not recollect their particular contents, but having received them in confidence, and knowing they blend personalities with politics, I have not permitted myself to re-examine them, because I feel an insuperable repugnance to violate the trust of any man. I give them to you, here is the cipher, decipher them, consider their contents well, and then inform me whether their promulgation may be necessary to my honor." We did so, and we gave the General our opinion that the promulgation might be necessary and proper. From an examination of those letters, and the General's evident surprise, and prompt declaration of his ignorance when we communicated certain passages of these letters, it was my own and Mr. Donaldson's opinion, that he had but partially deciphered them.

In answer to interrogatories on the part of Colonel Burr, I recollect to have solicited the command of a party to Natchez for the purpose of arresting Colonel Burr, and believing from the instructions which the General possessed, together with the state of things at that period, that the measure was warrantable; and having seen several communications from the Government to General Wilkinson, and particularly that in reply to his letter of the 21st of October, I had no doubt of the sanction of Government to any measures which were calculated to defeat the views of Colonel Burr. I have seen communications of a confidential nature from the President to General

Wilkinson, and I believe in reply to the General's letter of the 21st of October.

A. L. DUNCAN.

CITY OF RICHMOND, *sct.*

Sworn to and subscribed before me, this 5th day of September, 1807.

HENRY S. SHORE.

Test: WM. MARSHALL, *Clerk.*

I.

Deposition of Captain J. B. Walback.

I had the honor to become acquainted with General James Wilkinson some time in August 1799; became attached to his military family in December, 1800; was appointed an aid-de-camp in the Spring following, and continued in that capacity until the last of November, 1804.

During the above period, I have witnessed that General Wilkinson did employ ciphers of different kinds in his correspondence; among them was an English pocket dictionary. Several of these ciphers I have made myself; designed copies of some of them are still in my possession, and others I have recognised since my arrival at the city of Richmond; particularly one to the late General James Jackson, and another to the late Major General Alexander Hamilton; a third to a Mr. Hulings, then at New Orleans; a fourth to Colonel Cushing; a fifth to Mr. Silas Dinsmore, and one to myself. Several of these were projected in 1802 and 1803, at the time the port of New Orleans was shut, and for the purpose of procuring and conveying intelligence to the Government.

Q. Did you ever observe in General Wilkinson any act or disposition, which marked inattention to his duty, as to the zealous and faithful discharge of the trust reposed in him as an officer of the United States?

A. From my own observation and experience, (being now nearly twenty-six years in military life,) I can declare that I have never known an officer more zealously devoted to the service in which he was engaged, and I can safely declare that I have never seen an officer of General Wilkinson's rank voluntarily and cheerfully expose himself to such privations, hardships, and sufferings in the course of his duty, as I have seen him meet with alacrity.

Q. Do you know the handwriting of Captain C. Smith?

A. I do.

Q. Are these hieroglyphics of his writing?

A. They are.

Q. Are they the same which were employed by Colonel Burr in his correspondence with General Wilkinson?

A. They are the same which are employed in Colonel Burr's letters, shown me since my arrival at the city of Richmond, and said to be delivered by Messrs. Swartwout and Bollman to General Wilkinson.

Q. Do you recollect when Captain C. Smith left General Wilkinson's family?

A. Some time in July, 1801.

Q. Do you think General Wilkinson afterwards saw or was near him?

A. I am certain not, because General Wilkinson did not return from the Mississippi until May, 1804, and Captain Smith resided in the State of Maryland, and died in the Winter of 1803 or 1804.

Q. Have you seen General Wilkinson employ the pocket dictionary now presented to you in writing cipher?

A. I have.

Q. Will you say in what year?

A. I am not positive as to the year, but it was during the period I was attached to his military family.

Q. Did you hear a sentiment from General Wilkinson calculated to disaffect the troops, or to abate their zeal for its promotion?

A. No; on the contrary, I have witnessed that General Wilkinson always used his utmost endeavors to promote harmony, comfort, and good order among the troops, and by his precepts as well as example, to insure subordination and patriotism.

J. B. WALBACK,
Captain Artillery.

I am content that the above shall be read as evidence in all cases between the United States and Colonel Burr; and that anything which may be added by the affiant, by way of answer to interrogatories, may also be read.

GEORGE HAY,
U. S. Attorney for Richmond district.

CITY OF RICHMOND, *ss.*

Sworn to and subscribed before me, an alderman of the city aforesaid, this 15th day of September, 1807.

HENRY S. SHORE.

K.

ST. LOUIS, *May* 6, 1806.

SIR: You are to embark to-morrow, and will sail early the next morning, with Lockwood's and Strong's companies for Fort Adams, and on arriving there, you are to add Campbell's company to your detachment, and must proceed without a moment's unnecessary delay up Red River to Natchitoches, where you are to take the command.

The point of your destination being deemed at present a critical one, it is desirable your companies should be kept complete to the establishment; and for this purpose you are to make such disposition of the recruits ordered from Tennessee or elsewhere, as may be found necessary.

Your remote position from the posts east of the Mississippi, renders it convenient and necessary that they should, as heretofore, report directly to and receive orders from head-quarters; but the commandants are to report to you monthly, and will be liable to your orders as senior officer of the district, whenever the public service may require the interposition of your authority, which should be made with due caution, to avoid clashing with the arrangements which may issue from head-quarters.

The posts west of the Mississippi are subject to

your immediate command, and are to be governed accordingly. You are to appoint general courts-martial within the limits of your district, and are to decide on all sentences which may not affect a commissioned officer, agreeably to the rules and articles of war.

At the distance which separates us, it would be vain and presumptuous to prescribe precise rules for your conduct in command, where the occurrence of incidents and change of circumstances may be so unexpected and variable as to baffle anticipation, and to render positive orders destructive to the interests of the country. You are, therefore, to meet the public service with a sound discretion, and will be held responsible for events. The trust is a high and important one; but it is with singular pleasure I can observe, that my long experience of your judgment and capacity leaves no doubt on my mind, that the result will justify the public confidence, and prove honorable to your name and profession.

I will, therefore, submit one observation only to your consideration; it is, that you should not fail to employ the force confided to your command whenever it may be found most necessary to protect or defend the rights and interests of our country within the sphere of your authority.

With the warmest wishes for your fame and happiness, I am, sir, your faithful friend, and obedient servant,

JAMES WILKINSON.

Colonel Th. H. Cushing,
Second regiment infantry.

L.

Instructions from General Wilkinson to Colonel Cushing.

St. Louis, *May* 8, 1806, 1 o'clock, A. M.

Sir: Advice yesterday received from Major Porter makes it my duty to direct the acceleration of your movements by every practicable means, and I trust that in the present state of the waters, you may reach Fort Adams on the 20th instant.

On arriving at that post, the information you may receive must determine the course of your conduct. Should the Spaniards have resumed their positions east of the Sabine, or assumed a menacing aspect at Nacogdoches, you must add to your command every man at Fort Adams, excepting a mere *locum tenens*, leaving orders at that place for Lieutenant Colonel Kingsbury to fall down to the mouth of the Red River, and there wait the return of a sufficient number of your barges for his transport to the high grounds, from whence it may become expedient for you to march the whole of your command, excepting the boats' crews.

I hope Major Porter may have the precaution to transmit the Executive a copy of the information he has forwarded to me, and that you may receive from that source, at an early period, decisive instructions for your government; in the meantime, though war be our trade, it is not only opposite to the genius and disposition of our country, but also to its substantial interests. The sword must not, therefore, be drawn but in the last extremity, to punish outrage, to resist invasion, or repel an attack.

Should indications justify it, (and you must take measures to ascertain, if possible, the designs of your neighbors,) you are to call to your aid every man who can safely be spared from the garrison under your orders, and will employ every pains and exertion to put them in the highest state of fitness for offensive operations.

You will find, in the hands of Major Porter, an order from the Secretary of War, which might justify you in pushing your neighbors beyond the Sabine river, should they have recrossed it to the eastward. But, as it appears from the public prints, that a pacific negotiation has, on our part, ensued these orders, you must not strain their construction to favor the effusion of blood, and involve our country in the certain calamities and uncertain events of war.

Learn, with all possible precision, the force, composition, and station, of the troops opposed to you; be yourself prepared for the combat; and, if a conflict must ensue, having previously animated your men by a strong exhortation, and sworn your officers in their presence to fall or conquer, make your onset with the bayonet; and your own glory, the honor of our arms, and the interests of the nation, will be insured and maintained.

Wishing you life and laurels, health and fame, I am your faithful friend and fellow soldier,

JAMES WILKINSON.

Col. T. H. Cushing,
1st regiment U. S. infantry.

P. S. You are to take with you from Fort Adams an eight inch howitzer, which you will find there properly equipped and amply ammunitioned.

M.

Extract of a letter from General James Wilkinson to the Honorable H. Dearborn, Secretary of War, dated

Natchez, *September* 8, 1806.

I arrived at this place last evening at six o'clock, and addressed a note to the Secretary of the Territory, (Governor Williams being absent,) of which you have a copy, under cover, with this answer; this morning I waited on him, and have seen the plan adopted by Governor Claiborne and himself, the first article of which appears to be in direct opposition to your order respecting the removal of the Spaniards from Bayou Pierre, to which place I understand they have fallen back from the vicinity of Adayes, and I hope they may continue there until my arrival at Natchitoches, for which place I shall commence my journey the moment after I have arranged with the Secretary of the Territory for such auxiliary force of militia as may eventually become necessary from his jurisdiction. Governor Claiborne has, I understand, arrayed militia in the western counties of the Territory of Orleans; but I shall discourage their march until I have penetrated

the designs of the Spaniard, and may find him deaf to the solemn appeal which I shall make to his understanding, his interest, and his duty.

Let the President be assured, sir, I shall drain the cup of conciliation to maintain the peace of our country, and that the sword shall not be drawn but in the last extremity, after reason and remonstrance have failed to preserve inviolate our territory east of the Sabine; but, at the same time, that an awful responsibility restrains the inclinations and ambition of the soldier to this temperate course of conduct, in opposition to the order which I think I discern in the Executive officers of these Territories, I will pledge my life to him that no act shall be suffered, within my knowledge, to tarnish the national honor or affect the lustre of his Administration.

If the precautions embraced by my instructions to Colonel Cushing, of which I transmitted you a copy from St. Louis, have prevented the effusion of blood, I must believe I have done some good to the State, because the retrospection of the Spaniards has rendered the ultimate appeal unnecessary, at least for the present: and as nothing can be lost, and everything may be gained, by a little delay, it seems better that the opportunity for exciting hostilities should have escaped, than that it should have been seized on to let slip the dogs of war before the effect of conciliatory measures had been duly tested.

The retrograde of the Spaniards is not accounted for, but may be ascribed to three causes; the unhealthiness of the troops, the want of forage for the immense cavalcade with with which they are encumbered, or the failure of provisions; but as they would scarcely have made so formidable and bold an advance, in the face of the prohibition uttered by Major Porter, without positive orders from the competent authority, it is reasonable to presume, when the cause of their progression has been removed, they may resume their former position, for which events some preparatory arrangements must be commenced. The Spaniards who have approached Natchitoches being all mounted and without artillery, and each private being obliged to keep up four horses and a mule for service out of his pay of one hundred dollars per month, it will be impossible for them to maintain a fortification; but the same circumstance will enable them to refuse or give battle to our infantry, at their discretion. To remedy this disadvantage, and enable me, should I be forced to appear to arms, to drive them effectually beyond the Sabine or to cut them up, I shall endeavor to procure about four or five hundred dragoons and mounted militia from the two Territories, unless I should find them so incautious as to enable me, by a forced march of the established troops, to surprise their camp under cover of the night; but this is scarcely to be expected, if the commanding officer possesses a spark of military knowledge or experience.

A blow once struck, it would appear expedient that we should make every advantage of it; and if men and means are furnished I will soon plant our standards on the left bank of Grand river. But I must beg leave to remark to you that, for distant operations, or the protection of our Western frontier against the predatory incursions of the Spanish cavalry, a body of mounted men is absolutely indispensable.

N.

Copy of a letter from General Wilkinson to the Secretary of War.

HEADQUARTERS, NATCHITOCHES,

October 4, 1806.

SIR: I yesterday morning received Governor Cordero's answer to my address of the 24th ultimo, copies of which you have under cover. The varied style of this letter, when contrasted with those of Governor Herrara to Colonel Cushing and Governor Claiborne, combined with the circumstances of the Spanish troops having recrossed the Sabine to a man, has induced me, on the ground of economy and expediency, also to discharge the militia who had reached this place, and to countermand those under march, excepting about one hundred dragoons and mounted infantry, whom I shall retain in service until I am apprized of the determination of the Captain General Salcedo, to watch the movements of our neighbors, to prevent their sinister intrigues with our disaffected citizens, and, should they re-enter our territory, to aid the established troops in expelling them.

The Spaniard raised his camp at the Bayou Pierre on the 27th ultimo, traversed the country to the highway leading from this place to Nacogdoches, which he intersected on the 29th, about twenty-six miles in my front; and on the 30th crossed the Sabine, and took post on the right bank, where Colonel Cushing left him the 1st instant. But, notwithstanding, I have been determined to diminish my force, as the pretensions of General Herrara have not been retracted, nor our jurisdiction acknowledged, and as the position taken on the right bank of the Sabine is a material departure from the state of things at the surrender of the province to us, and exposes our territory to immediate invasion, I shall continue my preparations for defence and offence, and to wipe off the species of stigma which cavillers may attach to the Spanish repossession of the ground from whence we had driven them; to give confidence to our friends, to confirm the wavering and the disaffected; and, above all, to assert unequivocally the pretensions of the Government, I have taken post within the limits claimed by the officers of Spain, and in a few days shall move forward to the east bank of the Sabine, where I shall wait the answer of the Captain General Salcedo. Were I required to justify this step, I should reply that the United States having forced a Spanish guard to retire from a position within their acquired territory, that Power protested against the act, denied their pretensions, and armed for the avowed purpose of recovering the ground from which they had been driven; that a Spanish commander of respectable rank, at the head of a considerable force in military array, did not only recover that ground,

but took position much nearer to our barrier, and far within our limits; that this officer claimed the jurisdiction of the country east of the Sabine to the Arroyo Hondo, in behalf of his master the King of Spain, and declared his determination to protect and defend it as such. Were we to suffer such outrages upon the national sovereignty to pass over without notice, injurious interpretations might be levelled at our military character, and our forbearance might be construed into a tacit dereliction of our claims.

Under these circumstances, and to do away the shadow of right which the Spaniards may endeavor to found on their posterior occupancy, I feel it incumbent on me to take possession of the controverted tract to its utmost verge, where my conduct will be regulated by that of my neighbors, who the last evening occupied the spot where Colonel Cushing left him on the 1st instant with his advanced guard mounted immediately on the bank of the river; but you may rest assured, nothing shall be done on my part to excite unreasonable jealousies or to provoke hostilities; and, therefore, to prevent the misinterpretation of my movements, I have taken the precaution to write Governor Cordero this day warning him of my intentions, and the motives by which I am actuated, agreeably to the copy now transmitted you. Of the militia from this territory, about four hundred have turned out, which was more than I expected. From the Mississippi Territory I have not yet heard, and therefore cannot say in what force they are advancing. I have hope from the aspect of Mr. Cordero's letter, and the actual state of their military at this moment, of which I have acquired the most clear and particular knowledge, that our differences here may be adjusted on honorable terms, and without bloodshed. I shall, however, be prepared for events, and will keep you regularly advised of every material occurrence.

With great consideration and respect, I am, sir, your obedient servant.

JAMES WILKINSON.

Hon. HENRY DEARBORN, *Secretary of War.*

O.

Letter from General Andrew Jackson to His Excellency William C. C. Claiborne, Esq.

NOVEMBER 12, 1806.

SIR: Although it is a long time since I sat down to write to you, still that friendship which once existed remains bright on my part; and although since I had the pleasure of seeing you I have waded through difficult and disagreeable scenes, still I have all that fondness for my old and former friends that I ever had; and their memory has been more endeared to me by the treachery I have experienced since I saw you by some newly acquired ones. Indeed, I fear treachery has become the order of the day. This induces me to write you. Put your town in a state of defence, organize your militia, and defend your city as well against internal enemies as external. My knowledge does not extend so far as to authorize me to go into detail, but I fear you will meet with an attack from quarters you do not at present expect. Be upon the alert, keep a watchful eye on our General, and beware of an attack as well from your own country as Spain. I fear there is something rotten in the state of Denmark. You have enemies within your own city that may try to subvert your Government, and try to separate it from the Union. You know I never hazard ideas without good grounds; you will keep these hints to yourself. But I say again, be upon the alert; your Government I fear is in danger; I fear there are plans on foot inimical to the Union; whether they will be attempted to be carried into effect or not, I cannot say; but rest assured they are in operation, or I calculate boldly. Beware of the month of December. I love my country and Government; I hate the Dons; I would delight to see Mexico reduced, but I will die in the last ditch before I would yield a foot to the Dons, or see the Union disunited. This I will write for your own eye and for your own safety; profit by it, and the ides of March remember.

With sincere respect, I am, as usual, your sincere friend, ANDREW JACKSON.

Mrs. Jackson desires her best wishes to you.

P.

Deposition of Commodore Shaw.

Be it known that, on or about the 7th day of January, Anno Domini 1807, Mr. Bradford, printer of the New Orleans Gazette, waited on this deponent, Captain Shaw, of the United States navy; and, after delivering a letter from a correspondent, he observed, that he had spent some time in the City of Washington and Philadelphia, and from Philadelphia he had travelled to Pittsburg, and from thence proceeded towards New Orleans; that the country through which he had passed was filled with commotion, and that there was a great number of the friends and followers of Colonel Burr. Mr. Bradford also mentioned that he had seen at the mouth of Cumberland river some of the public gunboats, and a number of men employed in fitting them out, and that they were to join Colonel Burr; that the men at work on board the gunboats told him (Bradford,) that Colonel Lyon had given up the gunboats to Colonel Burr, and that he (Colonel Lyon) was one of Burr's partisans. Bradford further observes that he saw a number of small arms which he supposed were carried on board the gunboats, and that the men at work on board the gunboats informed him (Bradford) that Colonel Burr had issued arms and ammunition to twelve thousand men; that Burr's flotilla consisted of seven gunboats and a brig of ten guns; and that Captain Talbot was commander of the flotilla. Bradford also observed, that he was suspected; and that, in order to show his innocence, he would wait on General Wilkinson and disclose to him all he knew concerning Burr and his plots; and further this deponent saith not.

JOHN SHAW.

Sworn and subscribed before me, this 12th day of May, 1807.

B. CENAS, *Justice of the Peace.*

Q.

Deposition of Com. Shaw and William Tharp.

Be it remembered, that this day, to wit, the 16th day of April, Anno Domini 1807, personally appeared before me, the subscriber, one of the justices of the peace for the city and parish of New Orleans, John Shaw, Esq., captain in the United States' Navy, and William Tharp, Esq., who being first duly sworn on the Holy Evangelists of Almighty God, declare and say, that on or about the 15th day of January last, 1807, passing from the coffee-house, about the hour of 12 o'clock at noon, they were accosted opposite the principal by Judge Prevost of this place, who observed that he was happy to inform these deponents that General Adair, the second in command to Colonel Burr, had arrived in town, and was then at Madame Nourages; that he had just waited on him, or had seen the man who had created so much stir, who said Colonel Burr would be in town in three days after him; that it would soon be discovered if the constitution and justice would prevail, or that of the usurpation of power and tyranny manifested in the measures at present adopted. Other remarks were made by the judge, in tone and gesture discovering evident marks of irritation and opposition to the measures of the officers of the Government, and impressed one of these deponents with an idea that the judge's object was to be personal with Capt. John Shaw, and extorted a reply that he (Captain Shaw) knew no private character; he obeyed and executed his orders without partiality, and should always be alert to meet and apprehend the disturbers of the peace and harmony of Government. These deponents remained but a few minutes with Judge Prevost, and went to the lodgings of the captain, where the deponents considered it correct to inform General Wilkinson that General Adair was then in town, which Captain Shaw did by sending his servant with a note to General Wilkinson.

JOHN SHAW.
WILLIAM THARP.

Sworn to and subscribed before me, the day and year within written.

B. CENAS, *Justice of the Peace.*

R.

Copy of a letter from Wm. White to Col. Andrew Burk, of New Orleans.

MIDDLETON, *December* 23, 1806.

DEAR SIR: Expect a large military force to take possession of your city; should it not happen before this reaches you, you may look out with hourly expectation of seeing it, headed by Col. Burr.

This is intended, should you see it in time, to apprize, in order that you may be in readiness to make your advantages of the times. A number of persons from this neighborhood are engaged in this expedition; amongst the number is your old acquaintance, Mr. A. Ralston.

Believe me to be, though much disappointed, still respectfully, yours,

WM. WHITE.

COL. ANDREW BURK, *New Orleans.*

S.

Instructions to Lieutenant Pike.

ST. LOUIS, *June* 24, 1806.

SIR: You are to proceed without delay to the cantonment on the Missouri, where you are to embark the late Osage captives, and the deputation recently returned from Washington, with their presents and baggage, and are to transport the whole up the Missouri and Osage rivers to the town of the Grand Osage.

The safe delivery of this charge at the point of destination constitutes the primary object of your expedition, and therefore you are to move with such caution as may prevent surprise from any hostile band, and are to repel with your utmost force any outrage which may be attempted.

Having safely deposited your passengers and their property, you are to turn your attention to the accomplishment of a permanent peace between the Canzes and Osage nations; for which purpose you must effect a meeting between the head chiefs of those nations, and are to employ such arguments, deduced from their own obvious interests, as well as the inclinations, desires, and commands of the President of the United States, as may facilitate your purpose and accomplish the end.

A third object of considerable magnitude will then claim your consideration. It is to effect an interview and establish a good understanding with the Ya-i-tans, or Cammanchees.

For this purpose you must interest Whitehair of the Grand Osage, with whom and a suitable deputation you will visit the Panis Republique, where you may find interpreters, and inform yourself of the most feasible plan by which to bring the Cammanchees to a conference. Should you succeed in this attempt (and no pains must be spared to effect it) you must endeavor to make peace between that distant powerful nation, and the nations which inhabit the country between us and them, particularly the Osage; and, finally, you will endeavor to induce eight or ten of their distinguished chiefs to make a visit to the seat of Government next September; and you may attach to this deputation four or five Panis, and the same number of Canzes chiefs. As your interview with the Cammanchees will probably lead you to the head branches of the Arkansas and Red River, you may find yourself approximated to the settlements of New Mexico, and, therefore, it will be necessary you should move with great circumspection, to keep clear of any hunting or reconnoitering parties from that province, and to prevent alarm or offence; because the affairs of Spain and the United States appear to be on the point of amicable adjustment; and, moreover, it is the desire of the President to cultivate the friendship and harmonious intercourse of all the nations of the earth, and particularly our neighbors the Spaniards.

In the course of your tour, you are to remark particularly upon the geographical structure, the natural history, and population of the country through which you may pass, taking particular care to collect and preserve specimens of every-

thing curious in the mineral or botanical worlds, which can be preserved and are portable. Let your course be regulated by your compass, and your distances by your watch, to be noted in a field-book; and I would advise you, when circumstances permit, to protract and lay down in a separate book the march of the day, at every evening's halt.

The instruments which I have furnished you will enable you to ascertain the variation of the magnetic needle and the latitude with exactitude; and at every remarkable point, I wish you to employ your telescope in observing the eclipses of Jupiter's satellites, having previously regulated and adjusted your watch by your quadrant, taking care to note with great nicety the periods of immersion and emersion of the eclipsed satellite. These observations may enable us, after your return, by application to the appropriate tables, which I cannot now furnish you, to ascertain the longitude

It is an object of much interest with the Executive, to ascertain the direction, extent, and navigation of the Arkansas and Red river; as far, therefore, as may be compatible with these instructions, and practicable to the means you may command, I wish you to carry your views to those subjects, and, should circumstances conspire to favor the enterprise, that you may detach a party with a few Osages to descend the Arkansas under the orders of Lieutenant Wilkinson, or Sergeant Balling, properly instructed and equipped, to take the courses and distances, to remark on the soil, timber, &c., and to note the tributary streams. This party will, after reaching our post on the Arkansas, descend to Fort Adams, and there wait further orders; and you, yourself, may descend the Red river, accompanied by a party of the most respectable Cammanchees, to the post of Natchitoches, and there receive further orders.

To disburse your necessary expenses, and to aid your negotiations, you are herewith furnished six hundred dollars' worth of goods, for the appropriation of which you are to render a strict account, vouched by documents to be attested by one of your party.

Wishing you a safe and successful expedition, I am, sir, with much respect and esteem, your obedient servant,

JAMES WILKINSON.

Lieut. Z. M. Pike.

T.

Additional instructions to Lieut. Pike.

Cantonment, (Mo.,) *July* 12, 1805.

Sir: The health of the Osages being now generally restored, and all hopes of the speedy recovery of their prisoners from the hands of the Pattawatamies, being at an end, they have become desirous to commence their journey for their villages, you are, therefore, to proceed to-morrow.

In addition to the instructions given you on the 24th ultimo, I must request you to have the talks, under cover, delivered to White Hair and the Grand Peste, the chief of the Osage band, which is settled on the waters of the Arkansas, together with the belts which accompany them. You will also receive, herewith, a small belt for the Panis, and a large one for the I-e-tans or Cammanchees.

Should you find it necessary, you are to give orders to Mongrain, the resident interpreter at the Grand Osage, to attend you.

I beg you to take measures for the security and safe return of your boat from the Grand Osage to this place.

Doctor Robinson will accompany you as a volunteer. He will be furnished medicines, and for the accommodation which you give him he is bound to attend your sick.

Should you discover any unlicensed traders in your route, or any person from this Territory or from the United States, without a proper license or passport, you are to arrest such person or persons, and dispose of their property as the law directs.

My confidence in your caution and discretion has prevented my urging you to be vigilant in guarding against the stratagems and treachery of the Indians, holding yourself above alarm or surprise; the composition of your party, though it be small, will secure to you the respect of a host of untutored savages.

You are to communicate from the Grand Osage, and from every other practicable point, directly to the Secretary of War, transmitting your letters to this place, under cover, to the commanding officer, or by any more convenient route.

I wish you health, and a successful and honorable enterprise, and am, yours, with friendship,

JAMES WILKINSON.

Lieut. Z. M. Pike.

V.

Extract of a letter from General Wilkinson to General S. Smith, dated

Fort Adams, *Sept.* 12, 1806.

At this moment thus stands the account between us and the Spaniards on the side of Texas: we dishonor the armies of Spain, and (as they allege) violate their territory, by forcing their advanced post, and compelling their officer to fall back many miles. [See General Dearborn's order to Porter.] In consequence, the Spaniard reinforces, advances, resumes his former ground, and braves us. We remonstrate and menace, but he keeps possession of the disputed tract. Is not the balance against us? It is my friend, and I will restore what we have—I trust in Heaven—without bloodshed; but at all events.

W.

General Morning Orders.

Headquarters, Camp la Piedra, 26 miles from Natchitoches, Oct. 28, 1806.

Parole.—C. Sign.

The depending movement of the troops is not to seek an enemy, but to assert a right of sovereignty; this right is denied by the Spanish commander in our front, who has recently warned the General, that he considers his advance an act of

hostility, with his orders to compel him to resist. Whatever, then, may be the calculation or the result, the safety and honor of the corps and the national interests require that every individual attached to the expedition should move and act as if an engagement were certain and inevitable. We are obliged to wait the attack, and our opponents, being all mounted, may give or refuse themselves at their discretion; and, of consequence, will avail themselves of any advantage we may offer them.

The signal to prepare for action, when encamped, will be a gun from the left, on which every man who bears arms will take his place in the line, and the whole wait orders. The signal to form, when under march, will be a gun from the front. The infantry, with their field pieces, will immediately form two lines with two hundred yards interval, and on the flanks of the road. Farrar's dragoons will retire by the road to the rear, and form a column prepared to charge. Major Welch's mounted infantry will skirmish, and fall back on the right or left of the front line, as the ground and other circumstances may render most advantageous. The moment the signal is given, the rear guard, pioneers, and every man of the line are to join their corps, leaving their packs and teams in charge of Mr. Ragan and the engagees of the quartermaster's and contractor's departments. Should an attempt be made to turn our flanks, which is probable, the infantry will form the hollow square, and the artillery take post on the angles, to enfilade the enemy with grape and canister. Major Welch's men to retire toward the rear, and endeavor to outflank our assailants; keeping up as quick and deadly a fire as possible. An officer to each division of the infantry will take post with the front rank; every other officer will be in the rear to see the men do not throw away their fire; and if one should be found so dastardly as to give back, to put him to instant death.

Under all circumstances, the artillery will receive orders when to fire: but the infantry, with shouldered arms, are to await the approach of the enemy, until within forty yards, when the front rank is to present, level well, fire, and charge bayonet. If the enemy are not broken or staggered, the second rank are to aim at their breasts, and when at fifteen yards are to pour in their fire, and, should they still come on, are to be received by both ranks with dauntless resolution on their bayonets. The dragoons are reserved for a critical effort, and will receive orders when and where to make it. The gentlemen will bear in mind that, whatever may be the order of the charge, the instant they close with the enemy, the action will become pell-mell. They should be careful to level their blows at the neck, rather horizontally than perpendicularly, and in general to cut and pass from man to man.

The Spanish force is greatly superior, and all mounted, but is undisciplined. Their attack will be made in great disorder, and probably with velocity and an air of boldness; because they will depend more on noise and appearance than the solid shock. It will be our part to present a rampart of bayonets whenever attacked. Let the officers be attentive to their men, and the men be silent and obedient to their officers. Let each individual put confidence in his own strength and the co-operation of his flank files. Above all, let us avoid hurry, which always produces confusion; and superiority of numbers will serve but to augment our triumph and increase the honor of our arms.

X.

I arrived at Natchez about the 27th of October from the Missouri, where I received a letter from General Wilkinson, dated Natchitoches, 23d October, 1806, directing me to despatch an express with a return of my detachment, and to fall down to Fort Adams, and take the command of that post. I arrived at Fort Adams about the 3d of November, and took command from Lieutenant Sevier; on my arrival, I found a Mr. Swartwout confined in the Doctor's quarters, with a violent attack of bilious fever. I was introduced to him, I think, by Dr. Davidson, who informed me that Mr. Swartwout had been to Natchitoches, and on his return to the mouth of Red river had been violently attacked and sent up to the garrison for medical aid; that he had gone down to see him and found him in a dreadful hovel, and had advised his embarking on board a barge which was ascending to the fort, where he could be more comfortably situated, and have his constant attendance. On the 12th, I received letter No. 1, hereunto attached, dated Natchitoches, 6th of November; this was handed to me by Lieutenant Graham, who informed me of the termination of the expedition to the Sabine, and that the troops were then on their return. Letter No. 2, hereunto attached, informed me of the return of the General to Natchez, which created some anxiety in my mind, in consequence of the orders exacting secrecy and ordering boats for the movement of all the military stores from Fort Adams. On the 15th, several of the officers arrived from Natchitoches, and visited their families, who were at a loss to account for the rapid movement of the troops from Natchitoches to New Orleans, and the embarcation of the military ordnance stores at Fort Adams confirmed us in the belief that danger was apprehended from some quarter, and that New Orleans must be the point of attack. We continued in this situation until the morning of the 18th, when the General arrived and requested me to walk with him to the battery, where he communicated to me the designs of Colonel Burr, informing me that he had received several letters from Colonel Burr, through one of his agents, (Mr. Swartwout,) and that Burr's principal attack would be upon New Orleans. I was never more astonished, not having heard that any suspicions were entertained against him; I informed the General the situation in which I found Swartwout on my arrival, and requested leave to arrest him. The General refused, saying that he expected to get much more out of him; that he had held out to Swartwout the idea of his not opposing Colo-

nel Burr, and he should assemble his whole force at New Orleans, to enable him to defend that place, and defeat the whole plan. I was directed to continue my civilities as before, for fear that Mr. Swartwout might get alarmed at the movement of the troops and military stores. On the 19th, I received orders to proceed with my command to Natchez, with instructions to take the necessary measures to ascertain the approach of a body of armed men from the Ohio country, and to give the General the earliest information, by express, of every movement from that quarter, either at Natchez, or by sending a confidential party up the river, above the Yazoo, in the disguise of hunters; and I accordingly communicated regularly every information I could collect. About the last of December I saw two letters, one from the Postmaster of Nashville to Henry Turner of Natchez, dated the 13th of December, stating that Colonel Burr was then in Nashville, and that he meant to proceed on the 20th to the mouth of Cumberland, where, report said, he would have assembled from five to eight thousand men, and that it was generally believed that he intended a visit to Mexico. The other letter to a Mr. Wood from Nashville, spoke of Colonel Burr's being in Nashville; that two of his proselytes left town that morning for New Orleans by land; from the best of my recollection the above statement of the letters to Turner and Wood is correct, and Colonel Burr's arrival very daily expected by all persons at Natchez. For my own part, I did not doubt it; and considering this information as all important to the General, I proceeded for New Orleans, arrived there on the 2d January, and communicated it to him. Soon after, this information was corroborated by the arrival of Bradford, the printer of the Gazette d'Orleans.

GEORGE PETER.

COUNTY OF WASHINGTON, *sct.*

On this 19th day of September, 1807, George Peter came before me, a justice of the peace for the county aforesaid, and made oath on the Holy Evangely of Almighty God, that the facts stated in the foregoing are true as stated.

THOS. CORCORAN.

Y.

Extract of a letter from Leonard Covington to General Wilkinson.

MAY 15, 1807.

You well know how much has been said and insinuated about the memorable ciphered letter, handed you by Swartwout, and of the means by which you unlocked the cipher; and, although this circumstance has never been explained by yourself or the Administration, and has been seized upon by your enemies as matter for crimination and ground for suspicion, yet I have never been at a loss, in my own mind for a satisfactory explanation. You may not, perhaps, recollect, that in the year 1794, when I left the western country, [army,] that you requested me to interchange with you a cipher for the purpose of corresponding thereby; and, at the time, you informed me that you had practised that method with many of your friends. This circumstance coming to my recollection, I have examined amongst my old papers and found the cipher, which is at your service, if it, and the circumstances connected therewith, can in any way advantage you. Pray, snatch one moment, if possible, and let your friends here know how you feel and are situated, &c., &c. Your favors by Mr. J. Johnson, all came safely to hand, and have warmed the feelings of your friends in this quarter. I pray God to keep you in his holy protection, and that he may make thine enemies thy footstool. Farewell.

L. COVINGTON.

Gen. JAMES WILKINSON.

Z.

WASHINGTON, *January* 3, 1807.

DEAR SIR: I had intended yesterday to recommend to General Dearborn the writing to you weekly by post, to convey information of our Western affairs, as long as they are interesting; because it is possible, though not probable, you might sometimes get the information quicker this way than down the river; but the General received, yesterday, information of the death of his son in the East Indies, and, of course, cannot now attend to business. I therefore write you a hasty line for the present week, and send it in duplicate by the Athens and Nashville routes.

The information in the enclosed paper as to proceedings in the State of Ohio is correct. Blannerhasset's flotilla of fifteen boats and two hundred barrels of provisions is seized, and there can be no doubt that Tyler's flotilla is also taken, because, on the 17th of December, we know there was a sufficient force assembled at Cincinnati to intercept it there, and another party was in pursuit of it on the river above. We are assured that these two flotillas composed the whole of the boats provided. Blannerhasset and Tyler had fled down the river. I do not believe that the number of persons engaged for Burr has ever amounted to five hundred, though some have carried it to one thousand or thirteen hundred. A part of these were engaged as settlers of Bastrop's land, but the greater part were engaged under the express assurance that the projected enterprise was against Mexico, and secretly authorized by this Government. Many were expressly enlisted in the name of the United States. The proclamation which reached Pittsburg, December 2, and the other parts of the river successively, undeceived both these classes, and, of course, drew them off; and I have never seen any proof of their having assembled more than forty men in two boats from Beaver, fifty in Tyler's flotilla, and the boatmen of Blannerhasset's. I believe, therefore, that the enterprise may be considered as crushed; but we are not to relax in our attentions until we hear what has passed at Louisville. If everything from that place upwards be successfully arrested, there is nothing from below that is to be feared. Be assured that Tennessee, and particularly General Jackson, are faithful. The or-

ders lodged at Massac, and the Chickasaw Bluffs, will probably secure the interception of such fugitives from justice as may escape from Louisville, so that I think you will never see one of them. Still, I would not wish, till we hear from Louisville, that this information should relax your preparations in the least, except so far as to dispense with the militia of Mississippi and Orleans leaving their homes under our orders of November 25th. Only let them consider themselves under requisition, and be in a state of readiness, should any force too great for your regulars escape down the river. You will have been sensible that those orders were given while we supposed you were on the Sabine, and the supposed crisis did not admit the formality of their being passed through you. We had considered Fort Adams as the place to make a stand, because it covered the mouth of Red river. You have preferred New Orleans on the apprehension of a fleet from the West Indies. Be assured there is not any foundation for such an expectation but the lying exaggerations of these traitors, to impose on others, and swell their pretended means. The very man whom they represented to you as gone to Jamaica, to bring the fleet, has never been from home, and has regularly communicated to me everything which has passed between Burr and him. No such proposition was ever hazarded to him. France, or Spain, would not send a fleet to take Vera Cruz; and though one of the expeditions, now near arriving from England, is probably for Vera Cruz, and perhaps already there, yet the state of things between us, renders it impossible they should countenance an enterprise unauthorized by us. Still, I repeat that, these grounds of security must not stop our proceedings or preparations until they are further confirmed. Go on, therefore, with your works for the defence of New Orleans, because they will always be useful, only looking to what should be permanent, rather than means merely temporary. You may expect further information as we receive it; and, though I expect it will be such as will place us at our ease, yet we must not place ourselves so until we be certain, but act on the possibility that the resources of our enemy may be greater and deeper than we are yet informed of. Your two confidential messengers delivered their charges safely. One arrived yesterday only, with your letter of November 12th. The oral communications he made me are truly important. I beseech you to take the most special care of the two letters which he mentioned to me—the one in cipher, the other, from another of the conspirators of high standing, and send them to me by the first conveyance you can trust. It is necessary that all important testimony should be brought to one centre, in order that the guilty may be convicted, and the innocent left untroubled. Accept my friendly salutations and assurances of great esteem and respect. TH. JEFFERSON.

Evidence of Gabriel G. Van Horne.

THURSDAY, *October* 1.

Witness. I was at the Chickasaw Bluffs at the time of Colonel Burr's descent down the river. On the 4th day of January, 1807, Lieut. Jacob Jackson came to the United States' factory at Fort Pickering, accompanied by a gentleman, whom he introduced to Thomas Peterkin, United States' factor, Peter Morgan and myself, clerks to said factory, as Colonel Aaron Burr. After some conversation, Colonel Burr and Lieutenant Jackson left the factory, and went to the garrison. Shortly after, one of the soldiers of the same garrison came to the factory with an order, signed A. Burr, for thirty pounds' weight of lead; twenty-eight pounds were delivered to the soldier. In the space of about four hours, the same soldier returned to the factory with a number of musket balls in his hat, saying he wanted to have them weighed, he took them away in his hat. In the course of the day, some boats came to the Bluffs, and the men came up to the factory. Colonel Burr requested Mr. Peterkin to let the men have the goods, and he would pay for them. Colonel Burr was frequently at the factory in the course of the day, and often had conversations with Mr. Peterkin.

In the evening, Mr. Peterkin, Mr. Morgan, and myself, went to the garrison, where we found Colonel Burr. I took notice that Colonel Burr was frequently called to the door by the men that had arrived in the boats, to have private conversation with them. Lieutenant Jackson asked Colonel Burr when Mr. Blannerhasset would be there; to which Colonel Burr replied, that he was then floating by, and could not land his boat. In the morning, Colonel Burr came to the factory, and demanded a bill for the articles which his men had got the day before. The bill was made out, amounting to sixty or seventy dollars, which he paid. The only articles I can remember were the lead, three dozen tomahawks, and three bear-skins. After paying the bill, Colonel Burr departed, and I saw him no more.

Cross-examined.

Mr. Burr. What kind of tomahawks were these; were they intended for war, or for more peaceable purposes?

A. They were such as were generally used for shingling.

Mr. McRae. Would they do well for fighting?

A. They would answer very well.

Evidence of George Poindexter, Esq.

Mr. Hay. Is this the original agreement entered into between Cowles Meade, acting Governor of the Mississippi Territory, and Aaron Burr?

A. Yes. If it is proper, sir, I will state the circumstances which led to the agreement, and Colonel Burr's surrender to the civil authority of the Mississippi Territory.

Chief Justice. Proceed, sir.

Witness. On the day preceding the date of this agreement, I was appointed by the Hon. Cowles Meade, then the acting Governor of the Mississippi Territory, an honorary aid-de-camp, for the express purpose of visiting Colonel Burr at the boats near the mouth of Bayou Pierre, on the western margin of the river Mississippi; which I did, in company with Major William B. Shields.

The object of this visit was to gain correct information as to the situation of Burr; to ascertain his views, so far as he would communicate them; and to procure his pacific surrender to the civil authority. We were accompanied by a Mr. Ralston, one of Burr's party, who had called on Judge Rodney to give his deposition. We arrived that night at Judge Bruin's, who resides near the mouth of Bayou Pierre. The next morning we proceeded down the river till we came opposite to Colonel Burr's boats, and Ralston gave a signal for a boat, which was immediately sent over for us. Before we embarked, we were joined by Colonel Thomas Fitzpatrick. Several persons, then unknown to me, but whose names I have since understood, came on horseback to the bank of the river, and crossed with us. I supposed them to be agents, sent by Burr into the country, to collect information respecting the public sentiment concerning him, and to induce the citizens to believe his plans were laudable, and sanctioned by Government. When we reached the western bank of the river, we were met by Colonel Burr, to whom Major Shields handed a letter, of which he was the bearer, from Mr. Meade, acquainting Colonel Burr with the object of our visit. In the letter there was a sentence relating to the restoration of tranquillity in the Territory, which sentence Burr repeated once or twice with a sneer, adding, that "he had no intention to injure the citizens of the United States." Colonel Burr then expressed himself to this effect: "As to any projects or plans which may have been formed between General Wilkinson and myself heretofore, they are now completely frustrated by the perfidious conduct of Wilkinson, and the world must pronounce him a perfidious villain." Burr, also, in speaking of Wilkinson, said: "If I am sacrificed my portfolio will prove him to be a villain." He further stated, that, so far from having any designs hostile to the citizens of the United States, he had intended to meet Mr. Meade at Gibson Port on the day of a general muster, which happened at that place about the time of his arrival at Bayou Pierre, but was deterred from doing so, by a belief that he would be assassinated were he seen passing through the Territory. He then pointed to his boats, and asked if there was anything military in their appearance. I told him it was true his men did not appear to be armed, but they were just such persons as I should expect to see about a camp—they did not seem to be in a situation to settle themselves on farms. I also remarked to Colonel Burr, that I had no hesitation in giving him the most perfect assurance of personal safety while in the Territory, until he should be disposed of according to the laws of his country; that the object of Mr. Meade in calling out the militia was to preserve inviolate the laws and Constitution of the United States; that, if that object could be secured without the employment of force, it would be preferable; but assured him that force would be used, if necessary, for which purpose the militia were then on their march to arrest his progress. Colonel Burr declared his willingness to submit to the civil authority, and proposed that an interview should take place between himself and the acting Governor on the next day, at some convenient place in the Territory; that we should guaranty his person from actual violence in the meantime, and restore him to his boats, if Mr. Meade should not accept his surrender to the civil authority; that his boats and people should keep the position they then occupied, until after the proposed interview took place; and that, in the meantime, *his people* (as he called them) should commit no breach of the peace, nor violate any law of the United States or the Mississippi Territory. The place designated at which Colonel Burr should meet the Executive was the house of Thomas Calvit, a respectable citizen of the Mississippi Territory, who resides near the mouth of Cole's creek, where the detachment of militia which had ascended the river was stationed. The substance of these propositions was committed to writing at the request of Col. Burr, and copies interchanged. The copy given to Colonel Burr is in the handwriting of Major Shields, and that which remained in our possession is in the handwriting of Colonel Burr, subscribed by him in my presence, and also by the witness, Colonel Thomas Fitzpatrick. Colonel Burr, according to stipulation, descended the river on the 17th day of January last, (the day after the agreement was entered into,) as far as the mouth of Cole's creek, in company with Colonel Fitzpatrick, who directed him to be taken in charge by Captain Davidson's company of dragoons, and conducted to the house of Mr. Calvit. In a short time after Colonel Burr's arrival, Mr. Meade and himself commenced a conversation on the subject of his surrender to the civil authority of the Territory. I do not know everything that passed between them, but understood the following terms were offered to Colonel Burr by Mr. Meade: 1. That the agreement entered into for the purpose of procuring that interview should be declared void; 2. That Burr should surrender himself unconditionally to the civil authority, and proceed directly to the town of Washington: 3. That his boats should be searched, and all military apparatus found on board of them to be disposed of as the Executive should think fit. To these terms Mr. Meade required Colonel Burr's unequivocal reply, as I understood, in fifteen minutes; and if not agreed to, Burr was to be instantly returned to his boats, and the militia ordered to seize the whole party by force. The terms were agreed to, and carried into effect. Colonel Burr declared himself unwilling to fall into the power of General Wilkinson, and requested, if any attempt should be made to seize him by a military force from New Orleans, that it might be opposed. I was myself of opinion that General Wilkinson would make no such attempt, as it would tend to subvert the laws and Constitution of the United States, and also the municipal regulations of the Territory. Had such an effort been made while Mr. Meade was the acting Governor, I have reason to believe that he would have maintained the empire of the law and the rights of the civil authority by force, if necessary. Major Shields and myself attended Colonel Burr to the town of Washington, where

he was delivered over to the custody of the law, and the examination of the witnesses immediately commenced before Judge Rodney. A committee of five gentlemen, as well as I recollect, was appointed to examine the boats, who proceeded up the river for that purpose, and, I believe, made their report to the Executive.

I was then called on in my official capacity as attorney general to give a written opinion as to the course which ought to be pursued with Colonel Burr. I did so, and that opinion, I believe, was filed in the office of the Secretary of the Mississippi Territory. My opinion was, that we had no evidence to convict Colonel Burr of any offence in the Mississippi Territory; that the supreme court of the Territory, to which a jury was about to be summoned, had no original jurisdiction of any prosecution, and could only take cognizance of points of law reserved at the trial in the circuit court; that, therefore, Burr ought to be sent under a sufficient guard, directed to the city of Washington, where the Supreme Court of the United States would be in session, and the judges attending from every part of the Union could direct the accused to be tried in the district where from the evidence it might appear that an overt act of treason had been committed. But Judge Rodney thought differently, and a *venire facias* was issued, requiring the attendance of seventy-six jurors at an adjourned session of the supreme court of the Mississippi Territory held in February last. From the number of jurors attending, a grand jury of twenty-three persons was selected, who received a charge from Judge Rodney, and adjourned until the next day. At the meeting of the court the next morning, I moved to discharge the grand jury; 1st, Because the court did not possess original jurisdiction in any case; 2d, Because the depositions submitted to my inspection did not furnish sufficient evidence to convict Colonel Burr of the offences with which he was charged, so as to bring them within the Mississippi Territory; 3d, That a warrant might issue, transmitting the accused to a court having competent jurisdiction to try and punish him, if guilty of the crimes alleged against him. The court being divided on this motion, it was overruled. The grand jury then retired. I determined to prefer no indictment, and left the court. In the evening, while I was engaged in the Legislature, a message was sent me by the court requesting my attendance. I immediately repaired to the court-room, and was desired to look at the presentments of the grand jury. I perused them, and found that the grand jury had presented the acting Governor for calling out the militia—the manner in which Colonel Burr had surrendered to the civil authority—the proceedings at New Orleans; and I believe the General Government itself did not escape. I felt and declared my astonishment at such unwarrantable proceedings, and informed the court that I should take no further notice of the presentments, and retired. Judge Rodney, I believe, likewise censured the conduct of the grand jury. It may be proper to mention that a respectable proportion of the jury withheld their signatures from those presentments. Colonel Burr that evening went to the house of Colonel Osmun, and disappeared. I afterwards attended the court, and had a judgment *nisi* entered on the recognisance given by Colonel Burr and his securities, Lyman, Harding, and Benijah Osmun; a *scire facias* was issued and served on the securities, which is now depending before the supreme court of the Mississippi Territory. What happened after Colonel Burr withdrew I know not, except from hearsay.

Cross-examined.

Mr. Martin. Have you a copy of the recognisance said to have been entered into by Colonel Burr?

Answer. I have not, but have seen a copy in the hands of Mr. Hay.

Q. Were you present when it was executed?

A. No.

Mr. Martin. You said that the judges ordered seventy-six jurors to be summoned. Who were the judges?

A. Bruin and Rodney.

Mr. Wickham. Do you know anything of military men sent from New Orleans to seize Colonel Burr?

A. I understood that there were, and that Dr. Carmichael, who resides in the Mississippi Territory, was one.

Q. Was there an expectation in that part of the country that General Wilkinson had sent men for that purpose, and that Colonel Burr would be seized?

A. It was talked of, and generally disapproved.

Q. Where was Colonel Burr at the time of his entering into the convention on the west side of the Mississippi?

A. He was in the Territory of Orleans, and, in pursuance of his agreement, came over to the Mississippi Territory.

Q. Did Colonel Burr seem to be apprehensive of military force?

A. He did not, except that he was particularly unwilling to fall into the hands of Gen. Wilkinson. He inquired of Colonel Fitzpatrick, Major Shields, and myself, whether there was any pass or way above Natchez through which he could get to Washita, and wished to know whether there was any person who could be employed to pilot him. We gave him no satisfactory answer on the subject. My own impression was, that he wanted to establish himself on the Washita as a place of rendezvous, to which his men might rally.

Q. Have you understood that an officer of the army was sent by General Wilkinson to take Col. Burr?

A. I heard a lieutenant of the army (but I had rather not mention his name) say that he was one of the persons employed for that purpose.

[Here Mr. Hay offered to read the recognisance entered into by Colonel Burr in the Mississippi Territory.]

Mr. Martin objected to its being read, and declared it to be a forgery. He said he was willing to

answer the consequences to Judge Rodney, and to give it under his hand that it was a forgery.

Mr. Hay. Judge Rodney is so near, Mr. Martin, that you can answer for it with perfect safety.

Mr. Poindexter. Mr. Harding, one of the securities in the recognisance, said that the recognisance returned by Judge Rodney was not the one entered into by Colonel Burr, Mr. Osmun, and himself. But I do not think it was believed by one honest man in the Territory.

Mr. Hay. Did the paper, of which this is an authentic copy, bear any mark of erasure?

A. Not that I recollect. It was in the usual form in which Judge Rodney took other recognisances; that the persons bound should attend from day to day, until discharged by the court. The recognisances of Blannerhasset and others, taken on the same occasion, were in the same form. Judge Rodney informed me that Mr. Harding sat down to draw the recognisance, and, after beginning it, said it was useless to go through with it; that they would acknowledge themselves bound before him, and he might make out the recognisance in due form at his leisure.

Mr. Wickham. Then you understood Mr. Rodney to say that the recognisance was not reduced to writing until the departure of Colonel Burr from his presence?

A. I so understood him.

Q. Then it was no recognisance at all?

A. That is a question of law.

Mr. Hay. As something has been said about Mr. Rodney, what is his general character?

A. One of the most honest men under heaven, and an old Revolutionary patriot.

Mr. Hay. And this is the man who has been charged with forgery by Mr. Martin!

Mr. Martin. Let him be who he will, I charge him with having returned a different recognisance from that which was entered into before him.

FRIDAY, *October* 2.

Mr. Poindexter was again called, and further examined.

Colonel Burr. Do you recollect whether it was one of the stipulations between Mr. Meade and me that military authority should be laid aside?

Answer. You were not required to surrender yourself a prisoner of war, but you surrendered unconditionally to the civil authority.

Q. Did not Mr. Meade promise to disuse all military authority as to me?

A. I do not recollect to have heard Mr. Meade say any such thing.

Q. Did you not hear Mr. Meade felicitate me on my fortunate escape from a party who were armed with knives and tomahawks for the purpose of coming on board my boat and massacring me?

A. I was not present at any such felicitation.

Q. Had Mr. Meade in his possession any document which would authorize him to issue any civil process against me?

A. Mr. Meade was an Executive officer, and could not issue a civil process in any case.

Q. Did not Mr. Meade declare to me that there was not any document in the Territory to authorize the issuing of civil process against me?

A. I do not recollect to have heard any such declaration.

Q. Had Judge Rodney any document before him that would authorize the issuing such process?

A. That is matter of opinion. There were sundry depositions in his possession, some of which were given by persons belonging to your party; many of whom voluntarily came forward and had their own depositions taken, in order to induce a belief that they had forsaken you. That was the general impression, as it appeared to me, and I believe it to be the fact. In those depositions they stated nothing of importance against you.

Q. Were not some persons seized by military force, and brought before Judge Rodney?

A. Not after your surrender to the civil authority, until the discovery of a paper which was said to have been taken out of the cape of a negro boy's coat. There was then some seizures at Natchez, by order of the Executive; and the persons seized were detained under a guard a short time, but whether they were brought before Judge Rodney or not I do not know.

Here Mr. Poindexter observed: One circumstance I omitted to mention yesterday which took place at the time when I visited Burr's boats. A boat commanded by Lieutenant Paterson of the militia, with between twenty and thirty armed men, landed about two hundred yards below, on the west side of the Mississippi, for the purpose of ambuscading the men of Burr's party who were separated from their boats, and were amusing themselves in the woods. A person whom I did not know at that time, but whom I have since found to be Davis Floyd, approached Colonel Burr, and asked him what was to be done; saying that a boat had landed a short distance below on the same side of the river; that he was not afraid to attack the boat, provided such were his directions. Colonel Burr immediately requested Colonel Fitzpatrick to interfere to prevent any attack from the boat; which he immediately did, and directed the lieutenant to return with his men to the mouth of Cole's creek.

Colonel Burr. Did you not hear Mr. Meade say that if Wilkinson should attempt to arrest me by military force, he would join me with the militia to prevent it?

A. I never did; but I remember Mr. Meade said that he would not permit any military force to come into the Territory, and arrest you out of the hands of the civil authority, if he could prevent it. He kept some militia in readiness for the purpose of supporting the civil authority, and acting as circumstances might direct. We were of opinion that a majority of the people who were about the court-house at Washington at the time the grand jury made their presentments were the friends of Burr, consisted generally of persons who had come promiscuously into the Territory, and it was supposed would interfere to rescue him, if necessary. My own impression was, and I be-

lieve it was the general impression, that he wished the force immediately about himself to cut a diminutive figure, while a majority of his adherents were dispersed over the country for the purpose of making favorable impressions on the people concerning him.

Mr. Hay here produced the papers said to have been found in the cape of the negro boy's coat, which paper is in the following words: "If you are yet together, keep together, and I will join you to-morrow night. In the mean time, put all your arms in perfect order. Ask the bearer no questions, but tell him all you may think I wish to know. He does not know that this is from me, nor where I am." Directed to C. T. and D. F.

Mr. Hay asked Mr. Poindexter if that was the original paper said to have been found in the cape of the negro boy's coat? He answered, yes.

Mr. Hay. Who were supposed to be meant by C. T. and D. F.?

A. Comfort Tyler and Davis Floyd.

Q. Is that paper in the handwriting of Colonel Burr?

A. I believe it is.

Mr. Wickham. Where did you first see that paper?

A. In the hands of Governor Williams.

Mr. Burr. How long were the persons who were seized at Natchez, after that note was found, detained in custody?

A. I do not recollect how long, particularly; but one or two days, I believe. Many of the young men arrested at Natchez declared that if Burr's designs were against the Government of the United States, they would be the first men to turn against him, and cut his throat. There are a number of them now remaining in the Territory; for he has supplied us with schoolmasters, singingmasters, dancingmasters, and doctors in abundance.

Mr. Hay. Where was Colonel Burr at the time when this paper was found?

A. He had disappeared, and was generally supposed to be at a Doctor Cummings's, near Gibson Port.

The undersigned certifies that the foregoing is a true statement of his evidence, as given in open court in the examination, on a motion to commit Aaron Burr, on a charge of treason against the United States.

GEORGE POINDEXTER.

October 13, 1807.

Evidence of Major James Bruff.

Tuesday, *October* 6.

Mr. Martin. Had you any communications with General Wilkinson about the time of his return to St. Louis?

Mr. Hay requested that the object for which the witness was introduced should be stated.

Mr. Martin said it was to prove the same as Timothy Kibby; that General Wilkinson held out the same inducement to him to join in an expedition against the Spaniards.

Mr. Hay objected to the introduction of the testimony on principle; he said that no man could be presumed to come prepared to explain every particular act of his life; that the *general reputation* of a witness could alone be inquired into, in order to assail his character. This he held to be a sacred rule of law and of justice.

Mr. Martin contended that the evidence was pertinent. General Wilkinson had declared that he had no knowledge of Colonel Burr's views till he had received the ciphered letter; we will prove that he had. He did not mean to say that the views of Colonel Burr were criminal; on the contrary, they were perfectly innocent; nor would General Wilkinson have been guilty if he had joined in them; but now General Wilkinson, in order to obtain favor with the Government, had turned traitor to Colonel Burr.

Mr. Wickham argued that the testimony of Major Bruff was admissible, to show an inconsistency in that of General Wilkinson.

General Wilkinson. May I be permitted to make one observation? I am not in the smallest degree surprised at the language which has, upon this and several other occasions, been used by the counsel of Colonel Burr—men who are hired to misrepresent.

Mr. Wickham. I will not submit to such language from any man in court.

The Chief Justice declared the style of General Wilkinson to be improper, and that he had heard too much of such language in court.

[General Wilkinson apologized. He said that it was impossible he could offer any intentional disrespect to the court, but he could not remain silent when he heard himself called a traitor.]

General Wilkinson proceeded: I am astonished at the explanation of the objects for which this witness is called; had I known the purpose for which he *volunteered* his services, (for he was not summoned,) I should have been able to produce documents to show the long, the implacable hatred which he has borne towards me.

Mr. Wickham said that Major Bruff was under the protection of the court.

General Wilkinson. I pray that his testimony may be introduced.

Mr. Hay observed that he had no doubt of the law, as to the right to impeach the credibility of a witness by showing an inconsistency in his testimony; he admitted that, if Major Bruff's evidence were introduced for that purpose, it was proper, but if for any other purpose, it was improper. They had no right to interrogate him for the purpose avowed by Mr. Martin: to show that General Wilkinson entertained the same views as Colonel Burr. However, as General Wilkinson was content that Major Bruff should proceed, he would not object.

The Chief Justice declared that he would not hear the witness as to any *particular* allegations against General Wilkinson, but with respect to any inconsistency in his testimony he must hear him.

Major Bruff proceeded: My testimony will arise from a number of conversations with General Wilkinson.

In four of these conversations, General Wilkin-

son took me aside; in three of which he locked me up in his room. The first hint I had of a connexion between General Wilkinson and Colonel Burr was drawn from two paragraphs in Kentucky newspapers, in the Spring of 1805, before General Wilkinson reached St. Louis: the first alluded to the old plan to form a separate government west of the Allegany, and ascribed it to General Wilkinson and associates, and doubting whether that scheme had yet been abandoned; the next was an extract of a letter from Fort Massac, published in the papers, which stated that Colonel Burr had been several days there with General Wilkinson, probably giving the General lessons on government, or digesting a new code or constitution for the government of Louisiana. These hints, with information received from Captain Stoddard immediately from Fort Massac, and who assured me that Colonel Burr had been there several days, closely engaged with General Wilkinson, and that he had or was about to furnish him with a barge or crew, in which he was to descend the Mississippi to New Orleans—

Mr. Wirt. You have not said when.

Witness. In June, 1805. These circumstances put me on my guard, and determined me to watch the motions of General Wilkinson and Burr.

As the General approached St. Louis, ascending the Mississippi from Fort Massac, he despatched a light barge ahead, with directions for me to meet him six or eight miles below, as he had something to communicate to me. I obeyed. We met, landed, and ascended the bank; the General took me into the woods. As we walked on, the General observed that he had been informed the Territory was divided by parties, (I mean Upper Louisiana,) which he attributed to the Americans, and said he would crush party or perish in the attempt; I observed that there had been some party business about the time of the French Convention and the memorials to Congress, but none since, except the aversion which the French appeared to have to the expense, delay, and uncertainty of our laws, and the introduction of lawyers. He then asked me how I stood with the French inhabitants, for he had heard there was some misunderstanding or coolness between us, occasioned by my observations about antedated concessions and fraudulent grants; I observed that some uneasiness had been excited by a report which I had made to the Secretary of War respecting private surveys which took in public property, but I believed they were then satisfied I had merely done my duty; he observed that he had witnessed their many attempts in the lower country to defraud the public, (the Orleans or Mississippi Territory, I do not know which;) that he knew them and mankind generally, and, if I would place my dependence on him, he would manage them for me.

Mr. Hay. He would manage them for you?

A. Yes; it alluded to a difference between me and the French. About this time, some Frenchmen from St. Louis had found us out, and were rushing through the bushes on us; he damned them for their intrusion. [Mr. Hay. To their faces? Answer. No, to me,] said he had something of importance to communicate, and hoped to have an opportunity there; but that he would take the first opportunity, after he had got settled, of making an important communication. A day or two after his arrival at St. Louis, his orderly came to me; I attended. I was taken into the parlor, and he locked the door.

Mr. McRae. What time?

A. About the last of June, or the first or second day of July.

Q. Can you name the day?

A. I cannot.

General Wilkinson. Can you come within five days?

A. No, I cannot. We commenced walking. The General appeared to be ruminating, and, after two or three turns, he asked me what sort of government would suit Louisiana. Without hesitation, I replied a representative republic would meet both the wishes and expectations of the people. He answered that he was surprised to hear me say so, for the French could not understand its principles, or be brought to attend elections; that the American inhabitants were a turbulent set, the mere emptyings of jails, or fugitives from justice, and did not deserve a free government; that a military government was best for these people, and no other was contemplated for them.

[Here Mr. Hay, observing that Major Bruff retired to a table on which several papers were laid, asked him when he had made the statement of his testimony which he was then giving. On being answered that it was recently done, and since his arrival here, Mr. Hay requested that he would not again look at it; Major Bruff said that his statement was drawn from a number of letters which he had written to his friends about the time of the transactions alluded to, and from an intended publication against the General.]

That the politics of the United States had undergone a great change; that the honest and wise had united to save the Federal Constitution, and prevent a division of property, which the Democrats aimed at; that the Democratic party in Congress had split and dwindled; and that John Randolph, Nicholson, and Leib, had lost all their influence both in Congress and with the Executive. I observed that he attributed principles and motives to the Republicans which they abhorred.

Mr. Hay. To which party do you belong?

A. To the Democratic.

Mr. Martin. Were you not then a Democrat, and did not General Wilkinson know you to belong to that party?

A. Yes.

On this subject we had a good deal of conversation. I remarked on the folly to suppose John Randolph would consent to throw his property into the public stock, in order to have a scramble for a part of it. However, the General observed that the object of the Democrats was to produce a state of anarchy and confusion; to seize on the property of the Federalists, and divide it among themselves; and this, too, he told me with a very

serious face. I will make one observation here: it is that these conversations, which I had with the General, were at different times, and it is possible that I may not have classed them precisely in point of time; but I am certain that they did happen, as nearly as I have stated; and, if the General will be candid, he will acknowledge it.

General Wilkinson. Indeed, I will not.

He said that Pennsylvania was convulsed by the Democrats; yet they would not succeed in turning out McKean, or introducing their arbitration system. I think that this ended the conversation. We got warm, the General threw open the door, and I walked out.

After dinner his orderly came for me again. I attended, was taken into his room, and the door fastened. He assumed a milder manner, and assured me that the politics not only of the United States, but of the Executive, had changed; that the difference between the present and former Administration was merely in name; that parties were kept alive by the cunning, in order to help them to office, or to keep them in; that the people mistook the character of Mr. Jefferson; that a want of energy was no part of it, but rather obstinacy. Here he observed that the French had not been enough attended to in the Territorial appointments; that they were the natives, and the Americans were ungrateful intruders, and now railed against a King and Government which had raised them from ashes.

Mr. Wirt. To whom did he allude?

A. I considered that he pointed his remarks to Mr. Austin particularly. It was the Spanish King and Government to which I alluded.

He then observed that Governor Claiborne (a miserable thing or tool) had distributed the appointments, in the lower country, among his American followers and dependants, and had neglected the French, for which he was execrated, despised, and forsaken by every person of talents and honor, except by a Dr. Watkins, who, no doubt, had some personal views. I observed that, in the lower country, the great body of the people were French; but that, in the upper country, there were more than two Americans for one Frenchman, and that the disproportion increased daily by emigration, and would soon entitle us to elections. He replied, God forbid we should ever see an election in Louisiana, and then observed it was the intention of the Government to depopulate that country, except the villages of St. Louis, St. Geneva, and St. Charles, and a small district of country around each, merely sufficient to support them; that land would be offered to the inhabitants on the east side of the Mississippi, which if they refused to move to, they would be pushed over at the point of the bayonet, and that I should be employed in the business. As I found that my replies only irritated the General, and kept back the important communications, I therefore determined, when I could not acquiesce in sentiment with the General, I would endeavor to be silent till I got the *important secret;* but I found I had already gone too far. The General appeared to be vexed and disappointed, threw open the door, and I walked out.

The next morning his orderly came for me again. I attended, and we had another parlor conversation with closed doors. He assumed a friendly manner, and begged me to recollect that it was some time since I had left the Atlantic States, and assured me that public opinion had undergone a great change in favor of energetic Governments and measures; that, if I persisted in exploded notions, they would injure me with my Government; that Democratic notions produced licentiousness; and that the very existence of an army and democracy was incompatible; that Republics were ungrateful; jealous of armies and military merit; and made no provision for the superannuated and worn out officers, but who were left to starve. In these latter opinions I agreed with him. The General seemed pleased that I should assent to any of his opinions. He was now silent. While we walked the floor one or two turns, with his eyes down on the floor, and seemed to be musing, he observed that he was fertile in schemes, and had made fortunes for many who did not then thank him for it. I smiled. He said, perhaps you think I had better have made my own fortune; true, but I have now a *grand scheme* in contemplation that will not only make my fortune, but the fortunes of all concerned. He paused, as if waiting for my answer. I was silent; had nothing to say; but wanted him to explain and go into the detail. After walking the floor several times, during which he appeared much agitated and vexed, he threw open the door, and I walked out, with only this glimpse of the *secret* which he had been so long preparing for me.

As I attended daily for orders until the arrival of Colonel Cushing, the next morning I found the General rather distant and reserved. He observed that he had yet enemies in the Army, and, among them, some from his own State; that he either hated or loved Marylanders more than others. Presuming this intended for me, I replied, I suppose you take me for a Marylander? Why, are you not? I answered, no. I was born in Jersey, but had the good luck to be brought young to Maryland, of which State my father, grandfather, and great-grandfather were natives. Born in Jersey! (replied the General,) a second cousin to a Yankee; a damned cunning fellow, I suspect. This was the first rude thing he had said to me; for before this I was treated with respect, and had received many friendly letters from him; I therefore attributed this to my declining to join him in his scheme to make fortunes. Some time after the troops removed to Cold Water, an officer informed me that they were encamped on a low, damp bottom, subject to be overflowed—

[Mr. Hay objected to the course of testimony pursued by the witness.

Colonel Burr said that he did not know the whole extent of his testimony, but that he had been introduced to show palpable contradictions in the evidence of General Wilkinson.]—

The Missouri on the one side, and a marsh or

bog on the other, and the whole cantonment commanded by a high second bank or hill in its rear. I observed the situation was not only unmilitary, but would become the grave of the troops if they were not removed. At that time I did not know that the General had contracted for the ground as private property, "a snug fixture where he might hang up his sword." The morning after this conversation I was sent for by the General, and severely and rudely reprimanded before two strangers, and forbidden to interfere with his plans and measures. I replied, it was my duty and inclination to obey his military arrangements; but should I discover any plans or measures which put to hazard the peace and safety of the United States, I would not keep silence, be the consequences what they might. He understood me; and from that moment I believe my ruin was determined upon.

Colonel Burr arrived a little time after this at St. Louis. [*Mr Wirt.* At what time? Answer. I believe in August, 1805.] A Judge Easton, who appeared to think very highly of Colonel Burr, and boasted of possessing a part of his confidence, informed me that Colonel Burr had inquired of him whether there was any officer of experience and enterprise who could be trusted with the command of an expedition to Santa Fe, and gave me a very inquisitive look. I demanded by what authority Colonel Burr made the inquiry, or in what light I was to view it. He replied that Colonel Burr, at that time, held no public office, but that he had powerful friends, and would probably be in a very exalted situation before long; that I had been well spoken of to Colonel Burr, (I suppose by himself,) and he advised me to make him my friend. I answered that the inquiry was a suspicious one; for if Government chose to employ me in that or any other way, it had a right to command my services; for I was in service at that time. We dropped the subject. [*Mr. Martin.* Was Easton at St. Louis? Answer. Yes. Question. Was he in habits of great intimacy with General Wilkinson? Answer. Yes, there appeared to be a good understanding between the three.] But as General Wilkinson, some time before, had written me "that every information of the route to Santa Fe would be highly acceptable, and recently sounded my inclination towards energetic Governments, and his grand scheme to make fortunes, I no longer doubted of their connexion.

Mr. Martin. How long was Colonel Burr at St. Louis? how was he treated by General Wilkinson? and how was he sent across the river?

A. When he arrived I was not in town, but understood that the General had rode out with him to the cantonment to view his troops; I saw the Colonel on the evening he returned. The Colonel strictured the situation, and laughed at the General's military notions.

Mr. Wirt. At Cold Water?

A. Yes, at Cold Water, and christened afterwards Belle Fontaine.

Q. How far from St. Louis?

A. Twelve or fourteen miles.

Mr. Martin. When Colonel Burr was there, how was he treated?

A. The General made a dinner, it was understood, for Colonel Burr; I was invited; the Colonel did not attend, but was said to be sick. When Colonel Burr was leaving St. Louis, I was about to cross the river to my plantation on the opposite side; his baggage was brought to the ferry-boat, when I saw the General's barge getting ready with colors and a complete crew in uniform. I afterwards saw the Colonel pass my farm on his journey, in company with Doctor Browne only; Easton was not with him.

Some time after Colonel Burr left St. Louis, General Wilkinson and Mr. Easton fell out. Easton complained that the General persecuted him; and often talked in a dark, mysterious manner, about a Western empire. Captain Stoddard also hinted to me, after his return from Fort Massac, that some great scheme was in agitation between Colonel Burr and General Wilkinson, but did not say what. Easton positively stated that there was a connexion between General Wilkinson and Colonel Burr. He complained that the General persecuted him. I observed that it was very strange that he should be the common friend of Colonel Burr and General Wilkinson, and yet they should misunderstand one another about him; that I rather suspected the General finding him unpopular with the French, and that he would not answer their purpose, had persuaded Colonel Burr to shake him off. Easton replied that Col. Burr was in his power, and he dared not treat him in a deceitful manner. I replied, I did not know Colonel Burr; but that his enemies represented him as an artful intriguer. Some time afterwards, Mr. Easton came to me and observed that he believed my conjectures about Colonel Burr were true, and that he was to be made a sacrifice of; that he should go on to the seat of Government and try what he could do for himself. Easton was then a judge, appointed by the President, but not confirmed by the Senate, and he was apprehensive he would not be; that Gen. Wilkinson was using his influence to prevent the confirmation; but observed that Colonel Burr was much in his power, for that he had made him proposals which made the hair rise upon his head, astonished and confounded him so that he was struck dumb. [*General Wilkinson.* Were these his very words? Answer. Yes.] That Colonel Burr observing this, would have retracted, but it was too late. I urged him to explain the nature of the proposals. He said he was under an obligation of secrecy; but no obligation should hold him if he found Colonel Burr false to him. I observed to him that he well knew that any obligation which led him to conceal or commit a crime, could not be binding. He observed, he was going on to the seat of Government, and should see Colonel Burr, and then he should take his measures. I saw Easton after his return; I urged him to explain the business which he had mentioned before; but he pretended to have forgotten that such a conversation had ever passed between us. [*Mr. Hay.* Was his appointment confirmed? A.

No; he lost his appointment, and had seen Col. Burr.] About this time, a paper called the "Western World" made its appearance, one of which was, I believe, directed to the General weekly. [*Mr. Hay.* After the return of Easton? A. Yes.] It roundly accused General Wilkinson of the old plan, of being concerned with Miranda, and connected with Colonel Burr. I observed to Easton, that I believed I should get the whole story from the "Western World," without being under any obligations to him; that if he had done his duty he might have served himself and his country, and perhaps prevented the effusion of blood. He observed, that he had once attempted to make a disclosure to Government, but instead of being countenanced, he got a reprimand. I demanded the instance; he said that he had written to a Senator in Congress, either from Vermont or New York, that he could prove General Wilkinson to be the projector of Miranda's expedition. The gentleman acknowledged the receipt of his letter, but informed him he had burnt it, advised him to mind his own business, and take care how he meddled with men high in power and office.

Mr. Martin. Had General Wilkinson any conversation with you with respect to the appointment of a certain John Smith, of Louisiana?

A. I had a conversation with him about John Smith; I remember going into the General's office, when he handed me two letters, one from Major Hunt, the civil and military commandant; the other from Smith, who complained that the commandant had ordered him off the mineral lands. The General censured the order, and asked me if I knew who John Smith was. I replied no, but had been informed he was one of Cox's captains. So Major Hunt insidiously observes, replies the General; but that does not lessen him in my esteem. He added that Smith was brother-in-law to Mr. Early, a member of Congress, who had brought forward a resolution to reduce the Army and dispense with his services as General; that there were many of his stamp in Congress; therefore, they must be attended to and kept in good humor, or we shall be turned to the right about.

Mr. Martin. Did you appear before the Secretary of War in order to make a statement as to the conduct of General Wilkinson, which you considered endangered the United States, and what was his reply?

Mr. Hay objected to the question, as it had no relation to the subject.

Mr. Wickham said that General Wilkinson had been interrogated by them, and required to say whether his conduct was approved or disapproved by the Government; that the Government had taken the most active part in this prosecution, and it was right and proper that the sentiments of the Government should be known.

The Chief Justice said the difference was this: the evidence of General Wilkinson arose from communications officially made directly from the Government. This is a different case; the evidence here offered consists of conversations with the officers of the Government.

Mr. Martin said that the Secretary of War was applied to in his official character, and in his official character he had said that General Wilkinson must and would be supported; that he had stood low in the estimation of the Government before his energetic measures at New Orleans, but now he stood very high.

Mr. Hay was about to make some observations in opposition to the introduction of such evidence, when General Wilkinson consented that the witness should go on.

Witness. In March, 1807, a few days before the rising of Congress, I was in the City of Washington, and waited on the Secretary of War; and the subject which gave rise to this visit and conversation between the Secretary of War, the Attorney General, and myself, was an appeal from the sentence of a general court martial, whose proceedings I contended had been arbitrary and oppressive, and the sentence illegal and unjust.

Mr. Wirt. Against whom?

A. Myself; and that I was not arrested until after General Wilkinson had sounded and found I would not answer his purpose; and, I believe, for fear I might penetrate his plans and be a spy on his actions, he determined to put me aside. The Secretary of War replied, that there had been a time when General Wilkinson did not stand well with the Executive; but his energetic measures at New Orleans had regained him his confidence, and he would support him.

Mr. Wirt. Who?

A. I mean the President. I asked if an inquiry into the conduct of General Wilkinson, his oppressions and illegal acts, and his connexion with Colonel Burr, might be expected? He answered, there might be an inquiry after the present bustle was over; but at present he must and would be supported. I then observed that, if an inquiry might be expected in a reasonable time, I would ask a furlough and wait; but, if not, I should resign immediately. He observed that I must not calculate on a speedy inquiry; but, if I was determined not to serve under General Wilkinson, my only resort was to resign immediately.

Mr. Martin. Who said so, General Dearborn?

A. Yes, General Dearborn. He, however, recommended me to draw up a short statement of facts for the President respecting my trial and sentence. I replied that if I did, I should certainly charge General Wilkinson with having been connected with Colonel Burr, and with having made attempts to bring me over to his grand scheme of making fortunes. He replied, if these are your impressions, you will be correct in stating them. This was the first conversation I had with the Secretary of War.

I had a second conversation with the Secretary of War, in which I insisted that General Wilkinson was acquainted with Burr's plans; that I would produce proof that he had been concerned, and did not secede till he found that Colonel Burr had commenced the enterprise with a handful of men, that the country was alarmed, and that the project was a desperate one. I then had a conversation with the Attorney General, on the legality of restoring my pay and emoluments, which

had been suspended by the sentence of the court martial. I informed him that a connexion between General Wilkinson and Colonel Burr could certainly be proved. He observed that the General had been low with the President, but at that time stood high, and would be supported. He observed, however, that there was a great deal of mystery in the allusions of Colonel Burr's letter to General Wilkinson, as well as their making use of a cipher. He advised me not to resign, but to wait events, for the Secretary of War had informed him that I was the only republican field officer in the service, and that public opinion was very fluctuating and whimsical.

After this I had a conversation with the Secretary of War and the Attorney General together. I think that Captain Clarke, the companion of Lewis, was also present. The Secretary of War shut the doors. We had some previous conversation; as, after the Attorney General came in, the Secretary of War introduced it again by observing that he had been informed that Colonel Burr had accompanied General Wilkinson to the Western country, spent several days with him at Massac, and then furnished the Colonel with a barge and men to descend the Mississippi to New Orleans. I replied that this was one among many reasons to suspect a good understanding, connexion, and co-operation between the General and Colonel; that I imagined both of them were well informed of the old plan attributable to the General and his associates, to form a separate government west of the Allegany under the auspices of Spain or England; of his famous memorial, which it is said procured him exclusive privileges from the Spanish Government; and the extraordinary visit Colonel Connelly, from Canada, paid him in Kentucky; but that there were recent events which were not without suspicion, such as his having spent the last winter of Colonel Burr's Vice Presidency at Washington; their great intimacy; the interest made to get General Wilkinson appointed and confirmed Governor of Upper Louisiana, with Burr's brother-in-law Secretary to the Territory, and many of his friends to places of trust and influence; General Wilkinson's drawing several hundred troops into a cantonment near the mouth of the Missouri; his connexions with Colonel Burr, General Adair, John Brown, of Kentucky, John Smith, of Ohio, and several others, since implicated or suspected of being concerned with Colonel Burr, to procure a charter for cutting a canal on the Indiana side of Ohio, on which a charter-bank was ingrafted, and would have produced those funds, the want of which seems first to have made the General to hesitate, (alluding to a paragraph in the ciphered letter.) I then stated Colonel Burr's visit to New Orleans, in a barge furnished by General Wilkinson; and that, after visiting the lower country, he came to St. Louis. I then stated the conversation with Judge Easton, as before mentioned, and the intimacy of those three persons; and that, when Col. Burr was about leaving St. Louis, the General had a barge got ready, with much parade, to put him over the Mississippi; that, some time after Colonel Burr's return to the Atlantic States, Miranda's expedition got ready and sailed, which a gentleman promised, if called on, to come forward and prove General Wilkinson to be the projector of; (that gentleman is Judge Easton.) I then observed that it was not easy to suppose that Colonel Burr, who knew Wilkinson's character, his former attempts, and desperate fortune, should spend so much time with him at Washington, where the scheme seems to have been first projected; pass through the country where Colonel Burr must commence his enterprise, where Wilkinson was well acquainted, and where Burr wanted agents (alluding to the Ohio) and partisans; yet never found him to make proposals, but wait till all was ready, and then make his first overtures by a letter; and, before he knew of the success of that letter in converting a patriot General into a traitor, should throw himself and his best friends, his choice spirits, into the power of a General he had so much insulted; that the General's measures in Upper Louisiana certainly had a tendency to disgust the people with the change of Government, and to prepare them for a revolt; that I did not know the General's attempts upon other officers, but he certainly had tried me; but if, on the contrary, Colonel Burr did communicate his plans to the General, either at Washington, at Massac, or St. Louis, and the General did not immediately inform his Government, he has not only grossly imposed on them and the public at large, but has been guilty of misprision of treason and perjury. The Attorney General, after I had gone through my statement and information, in substance and order nearly as related, asked me what would be the result, if all this should be proven? Why, just what the Federalists and the enemies of the present Administration wish; it would turn the indignation of the people from Burr on Wilkinson; Burr would escape, and Wilkinson take his place. I observed that it possibly might be the event; but justice and honor required that the whole truth should be known, let it operate as it might.

I then left the Attorney General and Secretary of War together, and, stepping down to the post office, found letters from St. Louis, detailing the operations of Colonel Burr, and a party from St. Louis and St. Geneva, the common friends of General Wilkinson and Colonel Burr, who attempted to join him with twelve thousand weight of lead.

Mr. Wirt. From whom was the letter?

A. Samuel Hammond. That letter offered proof that the party sent by General Wilkinson to Santa Fe was connected with, and a part of Colonel Burr's plans. As that letter related to the subject which we had been talking on, I sent it to the Secretary of War and the Attorney General; and another letter, which came on with it, to the point, from Judge Easton. They wrote that Major Wescot and Dr. Stell had left St. Louis and were joined by a Mr. Smith, Dodge, &c., from St. Geneva, who attempted to join Colonel Burr near the mouth of the Ohio. The Secretary of War returned the letters and thank-

ed me; but I have been surprised after offering proof, and naming gentlemen who knew that a connexion existed between General Wilkinson and Colonel Burr, that none of them were summoned to the grand jury. Major Bruff was here asked who those gentlemen were; and he mentioned General Adair, Judge Easton, and Major Kibby, who would prove the object of the expedition to Santa Fe, also Mr. Provenchere. He then stated that he had seen a letter from General Wilkinson to General Adair, in which General Wilkinson urged him to come on; said that he could not go without him; and then asked if he was ashamed to serve under a Spanish conspirator.

Gen. Wilkinson. When was that letter dated?

A. I do not recollect when. General Adair read it to me; he offered me a copy, which made me the less particular about its date.

Q. Where was the letter received? Was it at Washington in March last?

A. It was the letter which induced General Adair to go to New Orleans, as he said.

General Wilkinson pressed him to come on; said that thirty thousand troops would be sufficient to effect their purpose, as they would have little more to do than to take possession of the country; that they were to divide them into three columns, and General Adair was to have the command of one of them.

Mr. McRae. What country were they to take possession of?

A. I cannot say; but my impression was the Spanish country.

The General then chided him for the caution he used in writing; asked him if he was afraid to trust his friend, or ashamed to serve under a Spanish conspirator. At the bottom of the letter were these words: "We shall certainly have a Spanish war."

Chief Justice. Do you know the handwriting of General Wilkinson?

A. I do very well; I sat by General Adair when he read the letter; and it appeared to be the handwriting of General Wilkinson, but I did not take it up to compare it.

Mr. Martin. Do you remember the date?

A. I cannot tell the date or the place from which it was written.

Mr. Hay. Did it appear as if it was an ancient date, or modern?

A. Recent. General Adair complained bitterly; he said that this letter had induced him to go to New Orleans, where he was seized by General Wilkinson.

Mr. Wirt. Will you name all the witnesses who could give evidence of the connexion between Colonel Burr and General Wilkinson?

A. Judge Easton, to prove that General Wilkinson was the projector of Miranda's expedition; and to prove his connexion with Colonel Burr; Major Timothy Kibby, the person whose deposition has been circulated, and Pierre Provenchere, who could prove the connexion between General Wilkinson and Colonel Burr, and who was the common friend of both; Colonel Samuel Hammond, with whom General Wilkinson had a conversation nearly similar to the one he held with me and Samuel Hammond, jun. I believe I did not mention Colonel Dupiester, to prove the designs of the party, as to the establishment of a Western empire. I think Dupiester was mentioned as the friend of Colonel Burr, and, as I am informed, came from St. Louis as his agent, and brought with him his commissions and proclamations.

Mr. McRae. Did you see him at St Louis?

A. Yes: a Colonel's commission, it is said, was offered to Colonel Chotau, who attempted to throw it into the fire.

Mr. Hay. From whom did the proclamations and commission come?

A. They were said to be from Colonel Burr?

Mr. Hay. Who was to have commanded the horse?

A. A Mr. Delony, who had been an officer of the horse in the French service, it was said, was offered a distinguished command in Col. Burr's army. A Colonel Dupiester, it was said, brought on letters, one to Provenchere, and another to Timothy Kibby, a common friend of Colonel Burr and General Wilkinson.

Chief Justice. Did you see these letters?

A. We had a little democratic club intended to counteract those gentlemen. A Mr. Wherry, to whom Provenchere showed the letter, took a copy of it, and brought it down to us.

Mr. Wirt. What was in the letter?

A. Something to this purport: "He was ready; hoped they were ready; and that the expedition would begin to move about the 15th November."

Mr. Martin. How long have you been in the American service?

A. I bore arms in 1775 against the tories; had a second Lieutenant's place in 1776; and continued in service throughout the war.

Q. Have you been in the service ever since?

A. I entered the service again in 1794, under an expectation of bearing arms against the British; for I had been taken a prisoner during the war, and had not been well treated by them.

Q. What was your grade when you left the army?

A. Major of artillery.

Mr. Wickham. Did you see such a deposition as that of Timothy Kibby in the hands of the Attorney General or Secretary of War?

A. No; I gave them the letter already spoken of; I expected that all the gentlemen whose names I mentioned would have been summoned. It has been said that I came on here as a volunteer. I certainly should have come on in any event; but I was surprised that those gentlemen should not have been summoned, and that the inquiry should be on one side only.

Mr. Wirt. Is the Samuel Hammond you have mentioned the same person who had a commission in the time of Genet?

A. The very same.

Mr. Hay. I think you said it was in June, 1805, that General Wilkinson disclosed to you this important secret?

A. Not in June; some time in the summer; I think in July.

Q. What was the impression on your mind at the time, did you suppose it was some project hostile to the United States?

A. I did suspect that he had some grand project in view. I expected that he would have made the disclosure without my saying that I wished him to make my fortune. I did not intend to come under any obligation, or to commit myself.

Q. When was the first time that you made any communications to the Government, or any of its officers, with respect to those projects?

A. I have a letter here dated January 8, 1806, in which I say: "I have no confidence in the patriotism of General Wilkinson; and, as a man, I think of him with horror."

Mr. Wirt. To whom was that letter addressed?

A. To the Secretary of War.

General Wilkinson. Were you under arrest at that time?

A. No; I was not; (looking at his papers.) It does not appear, from this letter, that I was under arrest at that time.

Mr. Hay. I want to know the *fact* whether you were under arrest or not?

A. I was not.

Q. What was the interval between your arrest and the trial by the court-martial?

A. I believe eight or ten days, but I am not certain.

Mr. McRae. Had you not been in expectation of an arrest?

A. I had expected it for some time. In a conversation with the General, about my saying that he would not be in service six months, and he got very warm, and said, "this is sedition." I replied, then "arrest me."

Mr. Hay. At what time did this conversation take place about Cold Water when you stated, in your evidence, your ruin was decided on?

A. I think in September, 1805. Then commenced a system of persecution which terminated in my arrest. I was charged, among other things, with contempt of the General; that I never denied. I was found not guilty of all the other charges, except that one. Major Bruff then said that the sentence of the court-martial had been disannulled by the President of the United States; and his pay and emoluments, which had been suspended by the sentence, restored. [*Gen. Wilkinson.* I understood that was by stipulation. What is the date of the President's reversal? A. I believe it was on the 12th of March last; and my pay and emoluments being restored, is equivalent to a reversal.] *Major Bruff* proceeded: The Secretary of War observed that the President was disposed to do me justice; but it was a delicate point; and there was no precedent where a sentence had been confirmed by the Commander-in-chief, and afterwards reviewed by the President. I answered, that I thought it was not very delicate in General Wilkinson to approve a sentence when it was a mere personal thing between us. I understood that it was about the 15th of November, when the expedition was to have commenced, and the Mexican standard (an emblem of the sun) to have been raised. This delayed my departure from St. Louis. I expected to have seen Knights of the Sun and Lords of Mexico among the chiefs of those chosen spirits.

Mr. Martin. Whose property is the place called Cold Water.

A. I understand the greater part belongs to General Wilkinson; about four acres of which is deeded to the United States for a factory. He wrote on to me to purchase such a place. It was about this place that General Wilkinson made a rude attack upon me which I have before mentioned; but, I believe, the true source was, that I had said to an officer, in the confidence of General Wilkinson, that he would not be in office six months. I knew that Congress was about to meet, and that it was contrary to the genius of our Government that he should hold the two offices of General and Governor of Louisiana.

General Wilkinson. When did you receive the first intimation of my intention to retire from service?

A. This is intimated in a letter from the General, dated April 5, 1805. [Here Major Bruff read a letter from General Wilkinson to him. See reference A.]

Q. Did I not reiterate this intention after I came to St. Louis?

A. I believe you did.

Q. Do you recollect at what period after I got to St. Louis, whether late or early?

A. I cannot recollect. You often mentioned the subject.

Q. Were you subpœnaed to attend this place?

A. I was. I saw a subpœna in the hands of a gentleman for me; and Mr. Martin had told me in Baltimore that there was one ordered; and, therefore, I considered myself as subpœnaed from Queen Anne's county in Maryland.

Q. Then you had a conference with Mr. Martin?

A. I had.

Q. Do you recollect to have said that you were very reluctant to come, but Mr. Martin had promised to lash me into tortures?

A. I have said that, from a conversation with Mr. Martin, I had reason to believe that your letter to Colonel Burr, "post marked 13th of May," would be produced; but that I should have come, in any event. [Here a certificate of Colonel Meigs was read; for which see note B.] The first intimation I had of this letter was from a letter written by a gentleman of the grand jury to a friend of mine, stricturing the testimony of General Wilkinson, given before that body; that part of the letter was confidentially read to me.

Major Bruff was about to state a conversation with Mr. Martin, when he was interrupted by Colonel Burr, who said he could not consent to a narration of the conversations which might have been held with his counsel.

General Wilkinson. Did you say that you believed Burr was guilty; but that I had done you a serious injury, and you thought this a good time to seek redress?

A. I have said that I believed Colonel Burr,

concerned in that expedition with you. I have said so, and I think so still.

Mr. McRae. Will you state the character of Judge Easton?

A. I have accused him of an endeavor to swindle me out of half the land we purchased, in common, on which an arbitration is now depending.

General Wilkinson. Had you no land speculations with Easton?

A. No. I had no *speculations*; but we made a purchase of a single tract of land together. Perhaps you call that land speculations.

Q. You said that, when Colonel Burr arrived at St. Louis, Easton and myself were intimate?

A. I thought so.

Q. Did you not know that, about that time, I did not suffer him to come into my house?

A. I heard him say, after Colonel Burr had left St. Louis some little time, that you were persecuting him.

Commodore Shaw was called by the prosecution.

Mr. Hay. Did you travel in the stage with Major Bruff, as he was coming to this place?

Answer. I did.

Q. Will you state the conversation which passed in the stage?

A. The conversation was lengthy, and not particularly addressed to me. I understood, as Major Bruff stated, that a conspiracy had been organized in the Western country; at the head of which was Burr; and that General Wilkinson and several others, were implicated; that he had kept a watchful eye on them; had been on the alert; and that he had a just right to know that such a conspiracy existed. He said that General Wilkinson had done him a serious injury; and that he had come on, from some information Mr. Martin had given him, to tell a long story.

Q. What was the drift of the conversation; that he intended to injure General Wilkinson?

A. The impression on my mind was, that General Wilkinson had done him a serious injury, and he was coming to retaliate; but I cannot recollect the very words.

The Chief Justice declared that *impressions* were not evidence. Witness must always depose to *facts*.

Mr. McRea, to Major Bruff. I understand you to say that you were summoned from Queen Anne county, in Maryland. Did you ever see the subpœna there?

A. No.

Q. What induced you, then, to think that you were summoned there?

A. I own property in Queen Anne county, where I had been making arrangements for my return from the Western country. I went to Baltimore to transact some business, where I met with Mr. Martin. He told me that if I had not come to Baltimore he should have gone to see me. I asked him if the letter, "post-marked 13th of May," would be produced. He said, he believed it would; and informed me that I might consider myself summoned, for that he should order a subpœna for me."

Captain Daniel Bissel, called by the prosecution.

General Wilkinson. Were you a member of the court martial which sat on the trial of Major Bruff?

Answer. I was.

Q. By whom was Major Bruff arrested?

A. By Captain Richmond. He preferred the charges, and solicited the arrest.

Q. How many members composed the court; their names and rank?

A. Colonel Thomas Hunt, president; Colonels Cushing and Kingsbury, Captains Lockwood, Bissel, Strong, and Many; Lieutenants Peters, Mulford, Carson, Whitlock, Richardson, and Kimball.

Q. Was the court unanimous in their sentence?

Some doubts arose about the propriety of answering this question, consistently with the articles of war. It was waived for the present.

Mr. Martin. Was it not some short time before the court-martial, that an address to the President was handed about, which was signed by most of the officers?

A. I believe it was.

Q. Did Major Bruff sign it?

A. I do not know that he did. I did not see his name to it.

Q. Did not the officers impugn the honor of any man who refused to sign it?

A. It has been more than two years since the address was circulated; and I cannot recollect what were the impressions of the moment. Major Bruff said, he had seen a mutilated copy of the address published in the papers. The address was to the President; the object of which was, to continue General Wilkinson in the office of commander-in-chief while he was Governor of Louisiana. It says a great many handsome things about his services from Canada to Florida, and the sufferings he had undergone in the cause of his country. (Refer to note C.)

A.

(CONFIDENTIAL.)

April 5, 1807.

I am desirous, like yourself, to make a snug fixture, and hang up my sword. Our soil, we may thank God, is not favorable to military pursuits, and the profession of arms has become disreputable in our free and peaceful country. Will you look out for a handsome spot for me, five or six miles from St. Louis, of one thousand acres, more or less, rich, well timbered, and lying well for cultivation, with excellent water, and a mill-seat. I shall want such a spot. Will you have the goodness to look for one without speaking; and if a bargain presents, you may make, in your own name, a provisional contract, to be off or on in six months. Pardon the freedom I take with, and the trouble I offer, you.

With esteem and respect, your most obedient servant,

JAMES WILKINSON.

Major Bruff.

B.

Colonel Meigs's certificate.

RICHMOND, *September* 23, 1807.

I certify that, at Richmond, during the trial of Colonel Burr, for treason, Major James Bruff informed me that he was attending as a witness for Colonel Burr, for which he was sorry; that L. Martin had promised him, if he would attend as a witness, he Martin, would expose the character of General Wilkinson, by introducing into court a certain letter written by General Wilkinson to Aaron Burr, which letter Colonel Burr had declined submitting to the grand jury; and that Mr. Martin declared that he would lash General Wilkinson into tortures; and, upon these promises, he came.

R. J. MEIGS, Jr.

To his Excellency THOMAS JEFFERSON,
President of the United States:

Sir: It does not comport with the pride of a soldier tacitly to behold his General assailed by unmerited slanders; or to suffer the veteran, with whom we have run a *long* course of hardships and perils, to fall a victim to undeserved calumnies. The spirit of a soldier revolts against such apathy, and every man of sensibility would condemn such cold-heartedness.

We mean not to offend by this offering of a just tribute to merit; nor to derogate from the worth of the living or the dead, by those expressions of our sentiments.

We have seen with horror, and have felt with indignation, the various attempts which have been made to blast the character of General James Wilkinson. Some of us have served under his command twelve years, and have followed him from Canada to Florida; and all have been habituated to his command for many years, during which period we have seen him encountering almost every vicissitude to which active military life is incident. Generous, benevolent, and humane; his heart, his hand, and his purse, are ever open, and ready to succor distress and relieve misfortune; hardy, enterprising, daring, and brave, he encounters obstacles with alacrity, and is most exalted when pressed by difficulties. The ice, snow, and wintry blasts of the North; the arid sands and burning sun of the South; wild mountains and morasses, present no impediments to his course, where duty calls. Ready to take the lead in every extremity, he never exacts from others what he is not willing himself to perform. Daring, yet vigilant and cautious, he is provident in warding dangers, and resourceful in mastering them.

Let him be judged by his orders and arrangements, and military men will honor his principles and practices; rigid in his discipline, exact in his police, and indefatigable in every branch of service. He delights to comfort and cherish the sick soldier, and pays a sacred respect to the laws of his country, and the rights of his fellow-citizens, of which numerous instances could be quoted.

With him for a leader, we shall neither fear danger nor foresee difficulties, but shall march to battle with the assurance of victory.

The subscribers, composing the whole of the officers present at the cantonment and St. Louis, would suffer martyrdom sooner than profess what they do not believe, or proffer homage where it is not due; and with these sentiments, they hesitate not to declare, that they have offered the opinions of every man of honor who carries the sword of the United States.

THOMAS HUNT, *Col. 1st U. S. reg. inf.*
TH. CUSHING, *Lieut. Col. Adj. and Insp.*
J. KINGSBURY, *Lieut. Col. 1st reg. inf.*
B. LOCKWOOD, *Capt. 1st reg. of inf,*
ELIJAH STRONG, *Capt. 1st reg. inf.*
DANIEL BISSEL, *Capt. 1st reg. inf.*
JAMES RICHMOND, *Capt. 1st reg. inf.*
JAMES B. MANY, *Captain artillerists.*
GEO. PETERS, *1st Lieut. reg. artillery.*
CLARENCE MULFORD, *Lieut. artillery.*
WM. CARSON, *Lieut. 1st reg. inf.*
A. WHITLOCK, *Lieut. 1st reg. inf.*
W. RICHARDSON, *2d Lt. & adj. 1st reg. inf.*
JOSEPH KIMBLE, *Lieut. Adjutant.*
WM. KING, *Surgeon's mate.*
A. SANGRAIN, *Surgeon's mate.*
JOHN H. ROBINSON, *Acting Surg's mate.*

WEDNESDAY, *October* 7.

Mr. McRea requested that, on account of the extreme indisposition of one of Mr. Wirt's children, which prevented him from attending, the court might be adjourned till to-morrow. Independently of this circumstance, General Wilkinson, whose feelings had been severely wounded by the testimony of a witness yesterday, was in the course of preparation to remove those unjust imputations. He hoped that no objection would be made to the adjournment.

Mr. Hay said that, by an arrangement of the counsel of the United States, the principal part of the reply would devolve upon Mr. Wirt. It was therefore important that he should be present, to know what ground had been occupied by the counsel who preceded him. He did not expect any inconvenience would result from the proposed adjournment; and hoped it would not be opposed.

The adjournment was opposed by *Colonel Burr*, who stated that one of his counsel had been placed in the same situation as Mr. Wirt, and no indulgence was asked of the court on that account. He also mentioned that the court had, at its own request, proceeded with the examination when he was too much indisposed to attend.

The Chief Justice, after hearing an explanation from Major Bruff, about that part of his testimony respecting his daily attendance for orders, and going through the examination of John Brockenbrough and Joseph C. Cabell, Esquires, two of the members of the grand jury, adjourned till to-morrow.

Major Bruff begged leave to correct an error in part of his evidence given yesterday, in a point not material. This respected his attendance at the office of General Wilkinson every day. After his remark about Cold Water, and his saying

that should he discover plans and measures which put to hazard the peace and safety of the United States, he should not keep silence, be the consequence what it might. General Wilkinson was not visible to him for several days. Other officers attended, said Major Bruff; but I was not admitted in his presence. I wrote to the General, and I received an answer, which I have not here. It, however, stated that I should receive such attention as my conduct and rank entitled me to.

General Wilkinson, in explanation of Major Bruff's testimony.

THURSDAY, *October* 8.

Mr. Hay said he was ready to go on with the argument of the cause, but would not do it unless directed by the court. An attack had been made on General Wilkinson by Major Bruff, which it was the right and the duty of General Wilkinson to explain. Not a word, in the long and labored narrative of Major Bruff was testimony applicable to the case before the court. But, having made such serious charges against General Wilkinson, justice requires that the General should be heard in explanation.

General Wilkinson. I have several matters to submit to the court, which have been brought to my recollection by the occurrences of yesterday and the day before.

Grand jurors have been brought forward to contrast my evidence before that body with what I have said here. In the wide range of testimony which has been permitted, a witness may be readily misconceived by others, or misunderstand himself. In the case of Mr. Tazewell, your honor's sense of his testimony was in direct opposition to that of Mr. Burr's counsel; and in the case of Mr. Cabell, one of the most correct men in the world, he had misconceived, or did not understand me, respecting the mode in which Swartwout delivered Mr. Burr's letter to me. It is with deep regret I trespass on the time of the court; but when every art is employed, and witnesses are raked and scraped from every quarter to rip up the remotest transactions of my life, to affect my credibility, to wound my fame, and rob me of my reputation—

Here Mr. Wickham interrupted General Wilkinson, and said he must object to the course which he was about to pursue. General Wilkinson stands here on the same ground as any other witness. Let his explanations apply to his evidence, but not let him go into other subjects.

Mr. McRae hoped that the same indulgence which had been extended to others would be granted to General Wilkinson. It will be recollected with what patience their witness, Major Bruff, had been heard for six hours, while he was merely indulging himself in the carnage of General Wilkinson's reputation. General Wilkinson, who had been listening with most exemplary patience, now comes forward to explain; and, in the midst of a very short and respectful exordium, he is interrupted by the counsel on the other side.

The Chief Justice said there could be no doubt of the disposition of the court to hear as full an explanation as General Wilkinson might please to make; but he being merely in the character of a witness, would confine himself to a narrative of facts, and resort to argument as little as possible.

Mr. Hay hoped that something of argument would be permitted. Gen. Wilkinson had been assailed vitally, intentionally, and deliberately, by Major Bruff; and his explanations could not be so well understood unless he should, in some instances, resort to argument.

The General resumed: When I was first brought before the court, it was my intention to have commenced with Mr. Burr at Washington and traced him step by step from his passage of the mountains until his return; but I was confined to such facts as were deemed immediately revelant to the question before the court; and, therefore, I commenced with the reception of his letter at Natchitoches.

I now, sir, find myself obliged to adopt this course in order to explain certain observations which have come from the grand jurors, and also the inuendoes and insinuations of the witness, Major Bruff; who having charged me with a sinister connexion with Mr. Burr, has travelled from Washington to St. Louis to find matter for justification of the imputation. He has laid some stress on the interest which he says was made (by Mr. Burr and his friends) to procure me the government of Louisiana. I am under no obligation to explain how I procured that government; if I were, I could say it had been tendered to me by the President, two months before they had any idea of the circumstance.

I am charged with having invited Colonel Burr to the Western country. Herein I have been misunderstood, for the thing is not so. A few days after Colonel Burr descended from the Vice Presidential chair, an inquiry was made by me, as to the course he intended to pursue; he told me he intended to visit New Orleans, and I remember his very words were, "I have a few thousand dollars left, and I will not go to work until they are spent." I was solicitous to see him reinstated in the councils of his country; and speaking to the Hon. John Fowler, then a member of Congress, on the subject, he informed me that Mr. Lyon had suggested the idea of Burr's going to Tennessee, to procure his election to a seat in Congress, as residence was not a necessary qualification to election in that State, and requested me to speak to Burr on the subject; I did so, and I think he said it was a luminous idea, appeared to be delighted with the plan, and in concert with Mr. Fowler and Mr. Lyon, I then understood, and have since been assured by the former, who is now in town, the plan was digested without my presence or participation at any interview.

Mr. Burr soon after proceeded to Philadelphia; he wrote to me on the 26th of March requesting a letter of introduction to General Adair, and informing me he should set out for the Western country about the 10th of April. The next letter I received from him was at Pittsburg, dated the 30th of April, in which he tells me he should sail

that day for the Lower country, and is sorry he could not see me. At Louisville I received a third letter from him, dated the 19th May, in which he deeply regrets he could not see me there, and begs me to forward the letters of introduction I had promised him for New Orleans, after him, to that city. He proceeded from Louisville to Frankfort; and, I am authorized to say, did there apply to John Brown, Esq., to aid him in his proposed election in Tennessee, and to that end requested letters from Mr. Brown to his friends there. He then proceeded to Nashville, where, it appears, he remained beyond his calculation. I fell down the river to Massac, where Colonel Burr arrived on the 8th of June; and instead of spending several days in giving me lessons on government, and preparing a new code or constitution for Louisiana, he the next day prosecuted his voyage for New Orleans, in company with several officers of the army, who had been ordered to that city on a general court-martial; and it will be proven that I furnished him neither barge nor crew.

I heard no more of Mr. Burr until the 30th July, when I received a letter from him at the crossings of the Tennessee river, in which he informed me he was on the way to Lexington, and hoped to be with me at St. Louis about the 1st of September. He arrived at St. Louis on the 11th of that month, in the evening; expressed a wish to visit St. Charles, and I accompanied him in his route to the cantonment of the troops, about eleven miles distance, from whence he proceeded without me, crossed the Missouri to St. Charles, from thence passed over Portage des Sioux to the Mississippi and descended that river in a canoe to St. Louis. I think it was in our ride to the cantonment that Mr. Burr, speaking of the imbecility of the Government said it would moulder to pieces, die a natural death, or words to that effect, adding that the people of the Western country were ready for revolt. To this I recollect replying, that, if he had not profited more by his journey in other respects, he had better have remained at Washington or Philadelphia; for surely, said I, my friend, no person was ever more mistaken! The Western people disaffected to the Government! They are bigoted to Jefferson and democracy. And the conversation dropped. Mr. Burr, I think, on the same ride, spoke to me of purchasing an estate in that country, observing he had received advice of a sum of money which he should receive on his return to the Eastward, and asked me if I would resign my Government to him, in the course of the winter, if he should desire it. This I rejected on account of the emolument, which was $2,000 per annum, (for I was disgusted with the Government,) and he offered to indemnify me.

Nothing particular passed between us, after this, until the afternoon before his departure, which was on the 19th of September in the morning. He informed me that he wished to have some conversation with me, and I invited him to my house for the purpose. In the course of this interview he asked me "whether I could be content to vegetate or moulder in that damned Government," meaning the Government of Louisiana. I expressed my satisfaction with the situation, observing that "I was making arrangements to retire to private life; that I was tired of the erratic life I had long led, and that the delicate situation of my wife, to whom I owed more than I could render, made it necessary." After some pause, he asked me if my energies and enterprise were lost or dead; to which I replied, that my energies and enterprise had profited me through life little else than to expose me to perils and hardships. He then observed, but suppose some grand enterprise should present which would lead direct to fame and fortune. To this I replied, with indifference at first, remarking that I had been so long looking in vain for something of the kind, that I had given up the expectation; but added, after a short pause, that, if the Government should think proper to direct anything of the kind, he would not find that my energies or enterprise were lost. Surely, replied he, under the authority of the Government, and naming a minister, asked me if an order from him would satisfy me; to which I answered, that an order from any minister was obligatory on me, as they were all organs of the Presidential will. Well, said he, such a measure has been thought of, but it is unnecessary to go into the details of a project which may never be carried into effect; and I replied, that I had no curiosity to hear; and here you have as much of his designs as I possessed.

It has been observed that I have said I had no idea of any project of Colonel Burr before the receipt of his letter by Swartwout. This I deny. I have said I had no idea of any illicit design, such as would subject him to legal penalty or legal obstruction. Between the period of Mr. Burr's leaving St. Louis, and May, 1806, I received six letters from him; I have said that those letters blended matters political with matters personal. I have considered those letters confidential; they were so received, and I will not expose them, but in the last extremity, without Colonel Burr's permission; but if I have that permission, I will do it now; I have asked it, and do again ask it. Those letters were of an ambiguous aspect, speaking of some enterprise without designating any, and were calculated to inculpate me, should they be exposed. I have said I made a communication to a public minister, the Secretary of the Navy, to the following effect: "Burr is about something, but whether internal or external I cannot discover." It has been made a question how I could, feeling the friendship I professed for Colonel Burr, make such a communication when unapprized of any criminal intention; and I reply, that I justify it from a sense of public duty, paramount to all other obligations; from the consciousness that, if Mr. Burr intended no harm, the communication could do him none, as it was confidential; on the ground of self-security against events.

I had formed several opinions of Mr. Burr's views; sometimes I thought them chimerical; and the most definite idea I had ever attached to them was, that he had formed some connexion

with the British Government; that he was to operate with an expedition by the Gulf against the Mexican provinces; and that the United States were, in case of a war, which was every where expected, to co-operate by the Mississippi. I recollect well this impression, from the circumstance of my having mentioned to several persons, that if they would show me the embarcation of an army in England, equipped for a southern climate, I would tell them we would have a war with the Spanish Provinces; and from this impression my idea respecting Miranda's taking the bread out of his mouth must have sprung. I beg it may be remembered at this time, that Colonel Burr descended from the Vice Presidential chair with great *eclat*, and I did believe he was not only re-ascending in the public confidence, but in the confidence of the Executive; and, for these reasons, his step-son, Judge Prevost, had been appointed district judge to the Territory of Orleans. The republican body of the Senate had addressed Governor Bloomfield to enter a *nolle prosequi* on his behalf, in a case of great hardship and delicacy. The Senate had addressed him in the most flattering terms; and Dr. Browne, the gentleman who had married his wife's sister, had been appointed (solely on the recommendation of Colonel Burr) Secretary to the Territory of which I had been appointed Governor.

Frequent reference has been made to the letter said to be post-marked 13th of May. I have said I do not recollect whether I wrote Colonel Burr such a letter or not, and, of course, I have no recollection of the contents; but I said I believed I had written him three letters after he had left St. Louis, and this was my idea; but I recollect no particulars except the expression relating to Miranda, though I recollect perfectly the motives with which I did write him. I now find, from his letter of the 16th of April, that he had received no letter from me after October or November, 1805; and, therefore, I conclude I wrote him but two letters from the period he left me at St. Louis to the present day. I again required that the letter imputed to me, "post-marked 13th of May," should be produced. I think it was in the letter I wrote in October or November, 1805, that I make mention of Miranda; and I now believe it was after the receipt of a letter from him, on the 24th of December, 1805, that I warned the Secretary of the Navy against him. It has been said by one of the grand jury, that I declared I had employed language in my notes or letters to draw from Colonel Burr his real objects, that I might, in case they were commendable, partake of them; and if otherwise, report him to the Government. I acknowledge the first motive, but I do not recollect the alternative. If his plans had been vicious, I should have done my duty; if they had been innocent, I should not have reported him. I find, by reference to my correspondence, that I received no orders to leave St. Louis until the 11th of June, 1806; the troops had sailed the 8th of May, and I was left to exercise the functions of civil Governor, God knows without an idea of leaving the country, until the order arrived; and the much talked-of letter bears "post-mark 13th May," a month before I received my orders.

Mr. Hay. Will you state what passed between yourself and Major Bruff, when he descended the river to meet you on your approach to St. Louis?

Answer. I will. But I can state before you, sir, (addressing the judge,) and before God, (turning up his eyes to Heaven, and placing his hands on his heart,) that this whole narrative is either a vile fabrication, or a distortion of facts; and I will show why this man, above all others in the world, should not be in my confidence. On my arrival at Fort Massac, I met a number of officers under orders to attend a general court martial at New Orleans, among whom was Capt. Stoddart, who had taken possession of Louisiana on the part of the United States, and preceded Major Bruff in the command of St. Louis, and had acted as civil commandant of the country, until he had been superseded by the appointment of Governor Harrison, who had acted as Governor of Indiana, and also of Louisiana, until I was appointed to that Territory. In the course of my inquiries of Capt. Stoddart, relative to the state of the Territory, he informed me that Major Bruff had, by his conduct, made himself very unpopular with the inhabitants. In ascending the Mississippi, I halted at Kaskaskias, where I received a letter from Governor Harrison, by the hands of a Mr. Wallace, or a Captain Prince, who were in company; of which letter I hold an extract in my hand. [The reading of this extract was opposed by the counsel of Mr. Burr. The Chief Justice declared that General Wilkinson might either read the extract, or state its contents. General Wilkinson read the extract.*] The letter is dated the 7th of June, 1805, and was received on the 29th or 30th of the same month, and I met Major Bruff on the 3d of July. At the same place I received by a despatch boat an invitation to dine on the day of my arrival at St. Louis, with Mr. Augustus Chouteau, who, I understood, was the senior magistrate of the district, and as good a man as there is in that or in any other country. As I approached St. Louis, I sent a light barge ahead, and requested Major Bruff to meet me, for he also had invited me to dine with him on the day of my arrival. Knowing the jealousy of his disposition, and being desirous to conciliate and prevent exception, I wished to explain to him my motives for giving a preference to Mr. Chouteau's invitation; which I did when we met, by stating to him that, approaching the Territory in my capacity of Governor, the first respect was due to the civil magistrate; that I gave Mr. Chouteau the preference on this ground, and hoped he would excuse it. I met Major Bruff on the beach, under

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* *Extract of a letter from Gov. William Harrison to Gen. James Wilkinson.*

VINCENNES, *June* 7, 1805.

"Receive, I pray you, no impressions relative to the people of St. Louis, from Major Bruff, for reasons that I will hereafter explain. The bare idea of his being in your confidence would frighten some of them out of their senses."

a steep bank. I did not take him into the woods, nor had I any conversation with him of the import he has stated. We ascended the river about a mile, and were hailed from the shore. The boats landed, and I was met, I think, by three gentlemen—Mr. Augustus Chouteau, Mr. Anthony Soulard, and Mr. Charles Gratiot, who were introduced to me on board my barge, and invited me to land and take horse to St. Louis, to which I consented; and, debarking, I was received by a troop consisting of fifty or sixty dragoons, commanded by Capt. P. Chouteau, the brother of Mr. A. Chouteau. These, I presume, were the Frenchmen who hunted us up in the woods. I mounted a horse which had been provided for me, and was escorted to St. Louis. These are the facts, so far as they relate to the interview with Major Bruff. I dined with Mr Chouteau, but found that Major Bruff had anticipated Mr. Chouteau, and had engaged every officer to dine with him. I was left alone.

Mr. Hay. Had you those other conversations mentioned by Major Bruff, in which he states you have been ruminating about a grand project, which was to make the fortunes of all concerned?

A. It is impossible for me to say what conversations I had with the officers of the garrison, especially the one whom I found in command; but from the circumstances already stated, it is impossible I could have had those conversations with Major Bruff, mentioned by him. The Major, in order to substantiate his tale, has affected an air of mystery, and his imagination has furnished the scenery; for this purpose, he takes me into the woods, has us hunted up by a Frenchman, then locks a door where there was no lock, it being fastened by hooks and staples; nor was it necessary to shut it at all, as the ordinary guard at head-quarters gave two sentinels for its protection. This locking of the door betrayed some concert; for I well remember that, a few days ago, one of the counsel of Colonel Burr, (Mr. Martin,) demanded of me, emphatically, whether I did not recollect being locked up in a room with a gentleman, and having a long conversation with him.

Q. Did you ever select Major Bruff for the purpose of making confidential communications, or state to him anything about the prospect of making fortunes?

A. No, never.

Colonel Burr. Are you acquainted with a Mr. Bon Ami, a magistrate of New Orleans?

A. I have no recollection of any person of that name.

Mr. Wickham called for the production of the original letter of Governor Harrison to General Wilkinson, from which an extract had been read. The counsel of Colonel Burr contended, that as an extract had been read from it, they had a right to the whole letter, as the best evidence. They were answered by the counsel for the United States, that there was not a word in the letter which had any relation to Major Bruff, except the paragraph which had been read; and that the letter was entirely private and confidential.

After some further debate, the Chief Justice declared, that he felt great repugnance at the idea of producing the letter, as it was entirely private and confidential, and he was certain that neither the letter nor the extract could be evidence in the cause; but it was a rule of law, that when an extract was read, the whole paper must be read if demanded. In the present case, the whole letter must be produced, or the extract be withdrawn.

Mr. Hay remarked that General Wilkinson had been drawn into the production of the extract by the opinion of the court.

General Wilkinson addressed the Judge, and declared that he had produced the extract by his permission, and that without that permission he would not have produced it; that he held the letter sacredly confidential, and would go to jail rather than produce it.

The Chief Justice directed that the extract should be withdrawn, and requested all those who took notes of the proceedings would erase everything which had been said about the letter or the extract.

Mr. Martin hoped they would erase the impression from the public mind.

Mr. Wickham. You have said something about dining; did you not write to Major Bruff, from Kaskaskias, excusing yourself from not dining with him?

A. I cannot recollect.

Mr. Wickham. Are you certain that the door had no lock?

A. I have my clerk here, who can prove that it had no lock; it was fastened with hooks and bolts, after the French manner.

Mr. Wickham. Do you recollect what gentleman went down in the barge with Major Bruff?

A. I cannot.

Mr. Wickham. Do you recollect whether Mr. Gratiot came with him?

A. I have said that Mr. Gratiot, Mr. Chouteau, and Mr. Soulard, met me; but whether they came with Mr. Bruff, I cannot say.

Mr. Wickham. Will you say whether you first met Mr. Chouteau and Mr. Soulard in the woods?

A. I have already stated the circumstance of their going out of the boat with me, and accompanying me to St. Louis.

Major Bruff was called in and cross-examined by the prosecution.

Mr. Hay. I think you said that you had taken up some impressions of General Wilkinson's connexion with Colonel Burr, previous to his arrival at St. Louis? A. I had.

Q. Do you recollect having any conversation with an officer, stating that your reasons for writing General Wilkinson to dine with you, were on account of the injuries which had been done to his character?

A. No, but I have argued that the cropping order was perfectly a military one, and that he had a right to issue it; but I said nothing of his moral character. Nor have I justified his prosecution of Colonel Butler. I have also said he had some good military notions, though I do not know how, or in what service he acquired them.

Q. Do you recollect having any conversation with General Wilkinson in presence of Colonel Cushing?

Witness. What conversation do you allude to?

Mr. Hay. Had there been a coldness between you long anterior to the arrival of General Wilkinson?

A. Yes, I had long been persecuted by the General, but wished to bury the hatchet. I had been confined to a garrison without the liberty of going out of it, except by the permission of a superior officer, who was posted three hundred miles distant. Here is a postscript to a letter which proves an order to that effect from General Wilkinson. (See note D.)

Mr. Martin. Where did this superior officer live?

A. At Norfolk, and I was stationed about thirty miles from Wilmington, in North Carolina.

Mr. McRae. What was your construction of that order; is it possible that you could take it literally, and suppose that you were to be constantly confined within the walls of the garrison?

A. The order shows the intention; but the place had no walls; it was therefore nugatory; yet I considered the intention to confine me to the spot, nor did I leave it till I had permission. General Wilkinson ought to have known the situation, but it appeared he did not. I wrote to the Secretary of War, or Colonel Burbeck, from whom I received orders that admitted of my occasionally leaving the works and place.

Mr. Hay. Will you state whether General Wilkinson wrote to you to purchase some land?

A. I have a letter here, of the 5th April, 1805, which speaks of that subject. (See letter A. page 577.)

Q. When did General Wilkinson speak to you about his intention to quit the army and retire to private life?

A. I have had a number of conversations with General Wilkinson, and, in my evidence, I have endeavored to throw them into as much order as possible; but it is difficult to state any precise time when he mentioned to me that subject.

Q. Was it at St. Louis?

A. Yes, but the letter before mentioned gives a full explanation of his intention.

Q. Did he continue in this style of conversation after his arrival at St. Louis?

A. He did.

Q. But your suspicions still continued of his connexion with Colonel Burr?

A. I have stated that my suspicions arose from two paragraphs in two separate Kentucky papers.

Mr. Hay. You stated in your evidence the other day that you made a communication to the Secretary of War, and said to him that you could prove General Wilkinson's connexion with Colonel Burr. Will you state why you said so?

A. In one of my conversations I named witnesses who, I believed, could prove it, and insisted it was susceptible of proof. I not only thought so then, but think so still; and shall make it my duty to collect and exhibit proofs.

Mr. McRae. Did you say that General Wilkinson's having dined with Mr. Chouteau filled you with indignation?

A. I have said that I thought it an indignity offered me, and it was so thought by the officers. But let me here say, that General Wilkinson having denied our interview in the woods and rooms are incorrect, and I can completely prove it on my return to St. Louis.

Q. Did you not recommend Cold Water as a suitable spot for a cantonment?

A. While General Wilkinson was at Washington I received several letters from, in one of which he stated that a cantonment was wanting for five hundred men. He directed me to select a spot near Cahokia. He described the kind of position he wished. I reported several situations answering his instructions, but I do not recollect that I mentioned Cold Water among them; although I had viewed it, and thought it offered a good military position, (but not in the bottom;) which the General fixed on; nor did I conceive it was contemplated to have a cantonment in the midst of the settlements.

Mr. McRae. Were you not in treaty for it yourself?

A. I was. I wanted it for a farm and mill-seat, and not for a military post.

Q. Do you know whether that place is occupied as a military post, or used merely for the convenience of the soldiers while stationed there?

A. I think it a very unmilitary position. The troops were posted in a thick wood, which they had to cut down, dig up the roots, and grub up the bushes, for a parade. It may hereafter make a good meadow or field, when they are ordered on.

Q. Is there a factory there?

A. Yes.

Q. Good water?

A. There is a good spring and a handsoome marsh next to the second bank. There is also a commanding situation for a cantonment within the purchase, but not at that spot.

Q. Are you certain that there was a good understanding between General Wilkinson, Colonel Burr, and Judge Easton?

A. I believe there was. Easton often visited him, and endeavored to reconcile us after we fell out; and the General has sometimes read to me paragraphs from letters he had received from Colonel Burr, about the probability of a war with Spain, and a change of polities in the United States. He also read others from Dayton, and John Smith of Ohio, &c.

Q. Have you any reason to believe there was an intimacy between General Wilkinson and Judge Easton?

A. I have said I believed there was; Easton has told me so.

Q. Have you any other reason?

A. Easton was almost every day with the General.

Q. At what period?

A. On General Wilkinson's arrival, previous to the 4th of July, and for some time after, Easton was frequently in the General's office, and spoke of him in the highest terms.

Q. Was there any intimacy previous to the General's arrival?

A. I never saw them together previous to the General's arrival.

Q. Did Major Kibby reside on the frontiers previous to the arrival of General Wilkinson?

A. I believe he did. I have seen him, and understood he lived near St. Charles; I esteemed him as a man of honor, whose word and oath would be taken where, perhaps, General Wilkinson's would be shaken.

Q. When Major Kirby made the deposition which has been mentioned, was it not reported and believed that Lieutenant Pike and his party had been destroyed?

A. I cannot tell when he made the deposition.

Q. When you first heard of the deposition, was it not reported that Pike and his party were killed?

A. On recollection, I think I have seen an account in some newspapers of their having been destroyed; but the only report which I deemed correct was, that they were taken by the Spaniards, and conducted to Santa Fé.

Q. Did not Major Kibby quit our Government, and become a subject of the King of Spain?

A. That is my presumption. I found him in that Territory when I arrived there; but as I did not review the possession, it is mere conjecture.

Q. When Judge Easton mentioned to you that Colonel Burr had made him certain proposals, did he speak of any particular newspaper?

A. Not that I recollect.

Q. You have said there once seemed to be a good understanding between General Wilkinson and Burr; why would Burr apply through Easton for a man of enterprise, and not immediately to General Wilkinson himself?

A. The Colonel can best answer this question; but, if I may be allowed to conjecture, it was because the General had tried me before, and found I was too much of a democrat to be made a traitor of.

Q. But will you say how Burr came to apply to Easton?

A. You had better ask Colonel Burr that question; he may answer it.

Q. Were you and General Wilkinson about that time at variance?

A. Yes. He had before reprimanded me about the freedom with which I spoke of his military position at Cold Water, measures and plans.

Q. Did Easton know it?

A. I presume he did.

Q. You said that you had informed some of the heads of Departments that Judge Easton could prove General Wilkinson to be the projector of Miranda's expedition; will you state when you gave that information?

A. In March last.

Q. When did you first obtain it?

A. Just before I left St. Louis, in November last.

Mr. McRae. Then you received it in November, and communicated it in March?

Major Bruff. I left St. Louis in November for the seat of the General Government, but was detained on the way, so that I did not arrive until about the last of February.

Mr. McRae. Did I understand you that in August, 1806, you suspected an improper connexion between Burr and Wilkinson?

A. I have said that the first hint I had was from two paragraphs in two separate newspapers. This was afterwards strengthened by the information of Captain Stoddart, of Burr's being at Fort Massac, and the attempt of General Wilkinson to sound me.

Q. I speak of the time when the impressions were formed. Did that suspicion exist in August, 1805?

A. Yes, that they were connected in some plan.

Q. Believing as you did, why did you not communicate your suspicions to some of the officers of the Government?

A. I do not always communicate my suspicions; I was waiting for acts; my letters will show the nature of the communications I made. I have a copy of one with me.

Q. When is the first letter dated which communicates those hints?

A. The one I have with me is dated the 8th of January, 1806.

Mr. McRae. Did you state in that letter all the various circumstances you have mentioned; such as General Wilkinson's taking you into the bushes, your being surprised by a party of Frenchmen, and his having mentioned to you the plan of a grand project, by which all concerned were to make their fortunes?

Major Bruff. What will be the consequence if I read a part of that letter; will the letter itself be demanded?

Chief Justice. Certainly; but you may state from recollection.

Mr. Hay. You said it was your intention to state facts; and I wish to know whether these facts were stated. Now here are important facts.

Major Bruff. Hints were thrown out in the letter of the 8th of January, 1806; but nothing communicated till March, 1807, that can be regarded as a statement of facts. I however think I had given hints before, but have not the letters with me to refresh my memory, nor can I read what I intended as hints, from the one I have with me.

Mr. Hay. I assure you I shall not call for it if you say it is a confidential letter.

Major Bruff. Then I will say, generally, that I did give hints about which I expected the Secretary of War would have called for explanations, and demanded proofs. I also made a communication to Captain Lewis immediately after his return, and related to him the conversations between Judge Easton and myself.

Q. What Captain Lewis; the one who explored the waters of the Missouri and Columbia rivers, and the western part of the continent, as far as the Pacific Ocean?

A. The same.

Mr. Hay. But did you tell him of the conversa-

tions which had passed between Gen. Wilkinson and yourself? did you inform him that General Wilkinson had mentioned to you the grand expedition?

A. I believe that I hinted something of that nature.

Mr. McRae. Will you say whether you made a disclosure to the Secretary of War before the 8th of January, 1806?

A. I have said, over and over, that I believe I had hinted suspicions of Wilkinson's measures in previous letters, but have not those letters with me. I did think that Wilkinson and Burr were connected and acting in concert; and under this impression remained in that country till 15th November, 1806, in order to counteract and oppose their attempts, and pull down their standard.

Mr. McRae. Did you write prior to the 8th January, 1806?

A. I was in the habit of writing to Joseph H. Nicholson and other public characters.

Q. Had you written letters to them injuriously to General Wilkinson before the 8th of January, 1806?

A. My letters detailed Wilkinson's measures, which I considered suspicious and hostile to the interests of the United States and of Louisiana. I also stated that General Wilkinson appeared to consider me as a spy on his conduct, and had deprived me of all command and intercourse with the troops, and had prejudiced the officers against me.

Q. But had you written to any of the heads of Departments prior to the 8th January, 1806?

A. How often will you ask me this question? I have repeated, over and over, that I have not the correspondence with me; what do you wish me to say? I will repeat that my impressions are, that I gave the Government hints before that time that General Wilkinson's conduct was suspicious.

Mr. Hay. Did you think it was incumbent on you to state to the Secretary of War your suspicions of the patriotism of General Wilkinson, if they had been well founded, and your ideas of the views of Colonel Burr?

A. I was waiting for something unequivocal; I expected it to happen every day.

Mr. McRae. Did you say the other day that the Secretary of War had declared that General Wilkinson would be supported by the Government?

A. I did; the Secretary of War appeared angry, and frowned when I denounced Wilkinson, and said he must and would be supported.

Q. At what time did Judge Easton leave the Territory for the seat of Government?

A. I think in November, 1805.

Mr. McRae. Did you not give Easton special letters of introduction to your friends?

A. I believe I did; or, if I did not, I ought to have done so. He was then denouncing Burr and Wilkinson.

Q. Was that after you suspected him of treasonable designs?

A. It was after he mentioned the treasonable designs of Burr and Wilkinson.

Q. Did you not write to your friends particularly recommending Easton?

A. I wrote to Mr. Robert Wright and General Samuel Smith, as to the state of the Territory; and that Judge Easton was persecuted by Wilkinson, and was united with us to penetrate and defeat their designs.

Q. As far back as November, 1805, was there a public denunciation?

A. I gave the conversations with Judge Easton the day before yesterday.

Q. When did Judge Easton swindle you?

A. My information was long since that conversation.

Q. Are you on terms of intimacy with him now?

A. No; at variance. We have an arbitration depending.

Evidence of Captain Edward Pendleton Gaines.

Mr. McRae. We wish Captain Gaines to state the conversations of Major Bruff as he came on to this place in the stage.

Captain Gaines. Some time in the beginning of August, I passed in the mail stage from Alexandria to this place; and a little after daylight of the first morning after we had left Alexandria, I found Major Bruff and Lieutenant Swearingen were passengers. They got into conversation about Burr's trial. I paid very little attention to it; for, indeed, I did not calculate on its ever being noticed again; but my curiosity was at length excited by his saying that he was informed by Luther Martin, of Baltimore, that a subpœna was out for him; and, hearing of it, he had come on voluntarily for the purpose of giving evidence against General Wilkinson. I remarked to him that, as he had volunteered his services, it was presumable he had something of importance to communicate, and inquired what it was? He mentioned several things which he has already stated to the court; and, among others, a communication from Judge Easton, in which he (Easton) observed that he had written a letter to a member of Congress, offering to prove General Wilkinson to be the projector of Miranda's expedition. This appearing to be the principal evidence which he had to offer against General Wilkinson, I expressed my surprise that he should come for that purpose, as it could not be considered legal evidence. It appeared to me, from the whole tenor of his conversation, that he considered himself injured by General Wilkinson, and spoke particularly of his arrest. He stated that General Wilkinson had done him a considerable injury; and that the communications which he had now to make would bear very heavily on the General, or would do him as great an injury.

Mr. Hay. Do you recollect any particular expressions?

A. The substance of the conversation was, as I have already detailed it, that General Wilkinson had done him a serious injury in the case before the court martial, and now he would have it in his power to give evidence which would bear

hard upon the General, or do him as serious an injury.

Evidence of Captain Daniel Bissel.

Mr. McRae. It will be recollected that Captain Bissel was a member of the court martial which sat on the trial of Major Bruff, and has been partly examined. We wish now to ask some further information from him.

Mr. McRae (to Captain Bissel.) Was the court unanimous in the sentence passed upon Major Bruff?

A. There was a legal majority in favor of the sentence; some were for one more severe, but none for a milder one.

Q. What was the character of Major Bruff among his brother officers and the people at large?

A. I have been but little acquainted with Major Bruff. I had received letters from him and written in answer on public business, before I became personally acquainted with him. On my return to St. Louis in 1805, I found Major Bruff in great disrepute among his brother officers. He had been charged with being a partisan, and with having excited jealousies among the officers. He did not visit General Wilkinson; and a great many things were said of him, but I did not inquire into the particulars. I had never spoken to General Wilkinson about him, but made inquiries of Captain Richmond, and many others, and found that they united in an opinion very unfavorable to the Major.

Q. What is your opinion of the cantonment of Cold Water, as to the healthiness and the convenience of wood and water?

A. There is a great abundance of wood, and the best water in that part of the country. The cantonment is on the first bank, in a sandy and dry situation. It is not a commanding situation, because a hill runs parallel with the river, about half a mile distant from the cantonment. I was informed by my brother, Captain Russel Bissel, who was for some time stationed there, that the troops were very healthy. They were very healthy when I was there on the court martial, and have been reputed to be very healthy ever since.

Q. Was that situation chosen for a place of rendezvous, or a permanent position?

A. I cannot say what was the object of the station; it is very convenient as a place of rendezvous, and also for the collection and transportation of provisions and military stores.

Q. What is the general character of Judge Easton?

A. I have generally understood he bore an infamous character,

Q. Did Major Bruff give Judge Easton a room in the quarters furnished by the public to Major Bruff? A. That I know nothing of.

Mr. Martin. Is that the Judge Easton who was commissioned by Mr. Jefferson?

A. I suppose so.

Mr. McRae. Did General Wilkinson furnish a barge to Colonel Burr when he left St. Louis?

A. The barge and men which Colonel Burr had were furnished by myself; I received no orders from General Wilkinson on the subject. It was my own private barge, and the men belonged to my company, who were going down the river on public duty about the same time. It was an accommodation to Colonel Burr, and no injury to myself. General Wilkinson never gave me either verbal or written orders to my recollection, to furnish a barge and men to Colonel Burr.

Mr. Randolph. I am requested to ask you, whether, on the court martial for the trial of Major Bruff, Gen. Wilkinson was not a witness against him? and whether Major Bruff did not put a question to him about the conversation in the woods below Carondelet?

A. I have no recollection of any such question; the affair lasted very long, and a number of questions were asked which I cannot possibly recollect.

Q. During the court martial, did not the officers invite Major Bruff to dine with them?

A. I recollect having dined with him at two places; perhaps more.

Q. Do you recollect General Wilkinson saying, in answer to some question, that he did not keep a memorandum of small conversations?

A. I recollect such an answer of General Wilkinson, but I do not recollect the question.

Major Bruff. As my character has been brought in question, I beg leave to submit extracts of several letters from the General himself, who ought to know more of me than any other officer present. [Here Major Bruff read the extracts marked E, F, G, and H.] The proceedings of the court-martial have been furnished me, and, among the documents, is note of 3d of October, 1805, which he read.

Mr. McRae. Did you return an answer to that note?

A. I had an interview with the General. [Major Bruff here read an extract of a letter from General Wilkinson of the 4th of August, 1797, (G,) and another, shortly after the death of General Wayne, stricturing the character of that officer, dated June 18, 1807.]

Evidence of Lieutenant Clarence Mulford.

Mr. McRae. Are you well acquainted with Major Bruff.

A. I served under him.

Q. What was his general character?

Q. That is a very delicate question. Unfortunately for Major Bruff he had not many friends either among the citizens or officers.

Chief Justice. What was the character of Major Bruff as a man of truth?

A. I never heard it called in question.

Mr. McRea. What was his general character, before the arrival of General Willkinson, as a man of integrity and truth? I say his general character, for I never will inquire as to the every particular act of a man's life.

A. I cannot say. I do not know how he was esteemed as a man of integrity and truth; I never heard it impeached, but think the General had

more friends than he. I know that he was not liked as the commandant of the post.

Q. What kind of a position is Cold Water? is it a desirable one?

A. I thought it the most desirable one I ever saw, as to healthiness, wood, water, and the convenience with which provisions and military stores might be collected.

Q. Were you placed there for the accommodation of the troops, or for any military operations?

A. That place was selected for a cantonment, and for that purpose it is the most eligible I ever saw.

Q. What is Judge Easton's general character?

A. It is not good.

Q. Did Major Bruff accommodate Judge Easton with quarters in the garrison, which had been furnished to the Major by the public?

A. He did. When I speak of Major Bruff as not a good commandant of a post, I mean as to his not agreeing with the officers. As to his military skill, I say naught.

Colonel Henry Gaither was called in and interrogated as to the character and conduct of Major Bruff during the Revolutionary war.

Colonel Gaither. As to Major Bruff's standing in the continental service, he was very young when he entered into it; he was a very active, brave enterprising officer; he was sundry times badly wounded, and, as soon as he was able, always returned to duty; he stood very high among the officers.

Mr. Martin. Was his reputation high among the officers?

A. He stood high with the officers of the higher grades, particularly with General Otho H. Williams, Colonel Smith, and the rest of the field officers.

Q. As to his character in private life?

A. I frequently met with him in the Society of Cincinnati, and have long known him in private life, and never heard anything against him. His character, as far as I have ever known or heard, has always stood fair.

Mr. Bruff. I was never arrested nor even reprimanded during the whole course of the Revolutionary war, and services since; but, on the contrary, have had many flattering things said to and of me throughout my military life, till General Wilkinson differed with me. Captain Richmond, the officer who signed the charges and solicited my arrest, I considered as my friend; he was at my house almost every day before the troops moved to Cold Water, and on terms of intimacy, until the moment of my arrest. As to any disagreement with the officers of the garrison at St. Louis, I had none, except about duty. When I arrived, the garrison was in the most wretched order; not an officer understood the manual of artillery exercise; they did not even know how to post the men to the pieces, or the priming and loading motions. I, therefore, kept the officers to close duty, and it was for that cause, if any, that they complained and were dissatisfied; the inhabitants noticed and applauded the difference in the police and appearance of the men. Respecting the French, I had no personal difference with any one of them, nor did I ever injure any in their person or property; if I was unpopular with them, it must have arisen from loose observations I may have made about antedated concessions and grants, fraudulent surveys that took in the public works. The judges, military commandants, and lawyers, except Donaldson, were opposed to the General's measures, and friendly to me; and the bar volunteered their services in my court-martial, and the principal part of the Americans were on my side of the question; but I did not visit the cantonment. On being upbraided with my unsociable disposition on that account, I observed that they did not want democrats there, alluding to General Wilkinson's arragements to keep me from it, and mixing with the officers.

Lieutenant Mulford, being asked whether the majority of the people were friends to Major Bruff or General Wilkinson, observed: I fully believe that by far the greater part of the people, both French and Americans, were the friends of General Wilkinson.

Major Bruff replied that the President of the United States was the best judge of that. The only instance in which we tried our strength was a petition respecting the removal of Gen. Wilkinson from that Government, and the appointment of his successor.

D.

Extract of a letter from Gen. Wilkinson, dated

HEAD-QUARTERS, WASHINGTON CITY,
October 15, 1806.

Your residence will necessarily be within the walls of the place, and you will not absent yourself from it, without permission from your superior officer, who, under such indulgence, must be responsible for consequences.

JAMES WILKINSON.

Captain BRUFF.

E.

Extract of a letter from General Wilkinson, dated

DETROIT, *August* 4, 1797.

Your ideas touching the association of talents and duty are familiar to me, and will always have influence on my conduct; and, from the specimens of your intelligence which have fallen under my observation, it is but justice for me to declare that I take pride in such an officer, and that I shall feel pleasure in serving and obliging the man.

With much consideration, I am, respectfully, sir, your most obedient servant,

JAMES WILKINSON.

Captain BRUFF.

F.

Extract of a letter from General Wilkinson, dated

HEAD-QUARTERS, FORT WAYNE,
June 18, 1797.

The neglects of which you complain, and which I make no doubt are well founded, are by no means partial. The condition of that part of the army, stationed in this quarter, is truly deplorable, and, at this moment, presents a frightful picture to the

scientific soldier; ignorance and licentiousness have been fostered, while intelligence and virtue have been persecuted and exiled; the consequences were, that factions have been generated to sanction enormity, and it followed that all ideas of system, economy, order, subordination, and discipline, were banished, and that disorder, vice, absurdity, and abuse, infected every member of the *corps militaire*. To clear this Augean stable of anarchy and confusion; to abstract order from chaos; to incorporate the shattered parts of companies and of regiments, and to attach responsibility to its proper subjects, have employed my days and my nights for two months, and my work is not yet half finished; though, with the zealous co-operation of the intelligent and honorable part of my officers, I despair not of the final result.

I am, sir, your most obedient servant,

JAMES WILKINSON.

Captain BRUFF.

G.

Your request for personal accommodation, so far as it depends on me, shall be strictly respected; for I find no pleasure in life equal to that of serving an old meritorious soldier of the Revolution.

H.

It is necessary that you should descend the river, and take the temporary command of Fort Adams, on special service, which has strong claims to your skill and experience.

WAR DEPARTMENT, *March* 18, 1807.

SIR: Your letter of the 17th instant has been received. It is with regret that I find myself compelled, by the principles established in this Department, as well as by a sense of official duty, to accept your resignation; and it is hereby accordingly accepted, to take effect on the 30th of June next; in the mean time, you are at liberty to attend to your private affairs. That the remainder of your life, a great part of which you have spent in the service of your country, may be as happy as the lot of humanity admits, is my sincere wish.

I am, very respectfully sir, your obedient servant.

H. DEARBORN.

Major JAMES BRUFF.

Evidence furnished by the District Attorney.

Witnesses on behalf of the accused.

FRIDAY, *October* 2.

Littleton W. Tazewell was called to be sworn as a witness on the part of the accused.

I wish before I am sworn, that the point should be determined by the court, whether, as a grand juror, I am bound to give evidence of what passed in the grand jury room. I do not wish that the community or the grand jury should lose any right they may have, by any acquiescence of mine, if by law a grand juryman ought not to be called upon to state what happened before the grand jury. I submit myself to the court, and will act according to its judgment.

Chief Justice. There is no doubt but it would be improper for a grand juror to be examined to establish facts as founded on the evidence given before a grand jury, because the statements sworn to before them are only *ex parte*: but as to what a witness now called upon did say before the grand jury, evidence may be given by any grand juryman to prove the consistency or inconsistency of the witness. As an individual, I cannot say but I approve of the original policy of the law, which prescribed in the oath of grand jurymen a clause of secrecy; but when the Legislature of my country have changed that law, and struck out of the oath what relates to secrecy, it proves to me that the Legislature think differently.

Mr. Hay. This circumstance has weight. I thought that we could not come to this question to-day, but it involves the most serious consequences. The grand juryman is called to establish some change between the statement of General Wilkinson before the grand jury, and his statement made known in court. The court ought to hesitate before they admit such testimony. I have been told that the reason which induced the Legislature to make the alteration in the oath of grand jurymen was this; all presentments were to be made on the knowledge of two of their own body, (or on other legal evidence,) and as their oath required that they should keep secrecy, it was often impossible for the attorneys who prosecuted for the Commonwealth to prosecute with effect, as they could not know the names of the witnesses, and to remove this obstacle to public justice, the clause of secrecy was stricken out. If the opinion of the court be not decisively made up, I should wish to have an opportunity of reflecting on the subject, and showing that this evidence ought not to be admitted.

Mr. Wickham observed, that the Legislature had no doubt well weighed the policy of the clause requiring secrecy, and had determined against it; that there was no reason why they could and should not adhere to this legislative alteration; and that, as to a witness, anything he had said any where might be given in evidence against him, to show his inconsistency.

Mr. Martin. A grand juryman can, like any other man, prove facts known to himself, independently of what the witnesses proved before the grand jury.

Mr. Hay said that Mr. Martin did not understand him; and explained further that Mr. Henning had informed him that the Legislature were induced to make the alteration in the oath for the reasons already stated.

Mr. Martin observed, that the only reason that justified the grand jury's oath of secrecy was to prevent offenders against the laws from getting information of inquiries made against them and escaping; that this held no longer after the grand jury had been discharged; that while the grand jury were deliberating, it was proper to keep these proceedings secret; and that those against whom presentments were to be made should not have notice to make their escape; but that to prevent grand jurors from giving evidence after they are

dispersed, was to lay the foundation for the most atrocious and most infamous perjuries; that any man might go before the grand jury and charge another who was innocent with the most intriguous and enormous crimes in the world, and have him arrested and confined, and yet remain perfectly safe and secure from any punishment for his perjury.

Chief Justice. The question as to the policy or motive of the Legislature in changing the oath is different from the question before the court, which is, what is the legal effect of change? The original policy required the oath; but as the Legislature have changed it, I cannot see how the inference can be avoided, that their opinion of the policy is altered.

Mr. Wirt. If it should be discovered that in the original institution secrecy was necessary, independently of the oath, the court would not then receive the testimony without the consent of both parties.

After some few desultory remarks relative to reserving their objection to Mr. Tazewell's testimony,

Mr. Burr said that gentlemen might submit to his testimony with a *protestando*.

The Chief Justice again stated that the original policy of the institution which presented the oath of secrecy being changed, the testimony he supposed, must be heard; and

Mr. Tazewell was sworn.

Mr. Burr. Can you state the questions you put to General Wilkinson in the grand jury, and his answers?

Mr. Tazewell. It would be perfectly impossible to state them all, from the length of time he was under examination; but I have notes of the facts stated by him, from which and my memory I may be able to answer any questions which gentlemen may be pleased to ask.

Mr. Burr. State what you recollect about the formation of the cipher.

Mr. Tazewell. There are three kinds of ciphers. The original cipher was produced before the grand jury, in order to enable them to decipher the letter received from yourself, (addressing himself to Colonel Burr.) It is the alphabetical cipher, formed from an edition of Entick's Pocket Dictionary, now before the court; but as proper names occurred, the dictionary would not answer the purpose, and arbitrary marks were invented to represent them. The hieroglyphics were stated by General Wilkinson himself, without any interrogatory put to him, to have been devised by Captain Campbell Smith, in the year 1794; the dictionary, and arbitrary alphabet, and arbitrary signs for units, were designed in 1799 or 1800.

Colonel Burr. Were there any objections made as to these dates?

A. There were objections as to these dates in my own mind. The cipher was formed in 1794. On the face of the cipher these words occurr, "*Canada*, *Louisiana*, and *New Orleans*." It seemed to me a circumstance somewhat singular, that as early as the year 1794 ciphers relative to those countries should have been adopted, when probably no individual in this country had the acquisition of Louisiana in contemplation, as it was not purchased till some years afterwards. I asked him why he thought of a cipher expressive of that country at that time? He said that he could not explain the reason then, but that he would examine his papers and would tell us. The next day General Wilkinson, of his own accord, told us that the treaty with Spain about the free navigation of the Mississippi was formed about the year 1794. But he had correspondence on that subject, which was of great moment to the Western country; that in the year 1794 he was an officer in the army which marched near Canada against the Indians; and thus, therefore, part of the cipher had relation to Canada. He said that the cipher might have been formed in the year 1794, 1795, or 1796; but he believed in the year 1794. He was asked whether he could be more explicit as to the time, and he gave the same answers as he gave to-day in court.

Q. Did he assign any other reason why the cipher had relation to this country?

A. I do not recollect that he did, or whether we asked any further questions on that subject.

Mr. Burr. Did General Wilkinson say anything about this letter to me?

A. It was a subject of great interest with the grand jury to understand the cipher and the contents of the ciphered letter; after deciphering it, it excited a strong wish in them to see the letter post-marked the 13th of May, referred to in it, as having been received from General Wilkinson, by you, in the course of the correspondence between you. That wish was strengthened by the testimony of Mr. Swartwout, who said that he had seen a letter from General Wilkinson to yourself; that it was partly in common writing, and partly in writing in cipher; and that the letter contained these words: "I am ready."

Questions were put to General Wilkinson, whether he had written such a letter. He answered that his impression was, that he had written one, perhaps two or three letters; that he was not sure, but that his impression was, that he had written some letters. He was then interrogated as to the contents of those letters. He said he could not recollect them, but there was one expression which he wrote on that occasion which he did recollect; and his object in writing it was, to discover Mr. Burr's real designs; that expression was, "I fancy Miranda has taken the bread out of your mouth; and I shall be ready for the grand expedition before you are."

Mr. Burr. What motive did he assign for saying that Miranda would take the bread out of my mouth and that he would be ready for the grand expedition before I would?

A. He said he had had an interview with you at St. Louis; in which you stated, that you had some great project in contemplation; but whether it was authorized by the Government, or not, he did not explain, nor did you then inquire. He said this was all the information he was possessed of, at that time, of your designs; that he was sat-

isfied you had some great project in view; but had not expressed what that project was; that he was therefore anxious to extract from you your real designs; that the object of the correspondence was to develop those designs.

Mr. Burr. Did he assign any reasons for wishing to develop my designs?

A. I do not recollect that he did, or did not; but the avowed object was to communicate them to the Government.

Mr. Wickham, (holding in his hand a key to one of the ciphers.) Has there been any addition or alteration in this paper, since you saw it before the grand jury?

A. I will state my impressions, sir. I well recollect that this endorsement suggested one doubt to the grand jury: "I solemnly swear, that the numbers and hieroglyphics within, excepting those which denote the alphabet and the units, 'Burr' and 'Wilkinson,' were written by the late Captain Campbell Smith, in the year 1804, '5, or '6, then acting as my aid-de-camp." Mr. Randolph and myself had been both acquainted with Captain C. Smith, and supposed there was some mistake in this date. I recollect putting this question to General Wilkinson: "Do you think that this cipher could have been formed in 1804, '5, or '6, as Captain C. Smith must have been dead before that time?" The General, after some consideration, suggested that there must be a mistake in the date, and that "1794" was intended instead of 1804. I think, also, that the figures 1801, on the face of this paper, have been added since it was laid before the grand jury; I suppose that General Wilkinson's memory has become refreshed and more correct since his examination.

Mr. Hay. General Wilkinson was not interrogated here about this alteration.

Mr. Tazewell. General Wilkinson was asked whether this was an affidavit which he intended to swear to? He answered that there was a mistake specified in the endorsement, and that it ought to have been 1794, '5, and '6, as it is now put, instead of 1804, '5, and '6, (as it was then written.)

Mr. Hay. This endorsement is not in General Wilkinson's handwriting.

General Wilkinson. It is the hand of my clerk, Mr. Naw, who is here.

Mr. Hay. If Mr. Tazewell is here introduced merely to show these variations, why was not General Wilkinson himself interrogated about them? He could have himself explained them.

Mr. Burr. We have not heard of these variations before.

Q. Was not the year 1793 first mentioned as the date of the cipher?

A. I do not recollect.

Mr. Barker. Do you recollect, when it was represented to him that it was impossible a certain date could be correct, that he immediately changed it?

A. I am not certain.

Mr. Burr. Did you not understand that the motive of his holding a correspondence with me was to draw from me my views?

A. I am not certain that this was his language.

Q. Did you understand him to say that his object was to communicate my views to the Government?

A. Such, sir, is my impression. Indeed, this inference from his answers was so palpable, that I did not think it necessary to ask the question.

General Wilkinson. Do you recollect, sir, of any stipulation or acknowledgment, before the grand jury, that what passed there was in confidence?

A. I have lately conversed with another grand juryman, and I have now reason to believe that something of the kind did pass. You had the letter of the 12th November in your hand. You read a part, and paused; you observed, that perhaps it was not proper to read the whole. Mr. Barbour then said, that certainly it should be received in confidence.

Mr. Martin. You ought not to have entered into any such engagement.

Mr. Tazewell. I beg you to understand Mr. Martin, that I did not; but when I heard the letter, I thought it improper to mention it, and as a gentleman, sir, I will not. And though I have frequently spoken of General Wilkinson's testimony, I have never mentioned the contents of that letter.

General Wilkinson. Did you not understand me to say that my expressions, calculated to draw forth the views of Colonel Burr, particularly related to my letters in the Spring of 1806?

A. The only letters which General Wilkinson spoke of were subsequent to Mr. Burr's visit to St. Louis. General Wilkinson thought it probable that he had written the letter post-marked the 13th of May; but he did not positively recollect.

Several other questions were put to and answered by Mr. T., which the rapidity of his manner made it impossible for us to take down.

SATURDAY, *October* 3.

Mr. Tazewell was again called by Colonel Burr, and asked whether he had observed any inconsistency in the evidence of General Wilkinson?

Mr. Tazewell said it was not for him to state what his impressions were, arising from the whole tenor of General Wilkinson's evidence. Indeed, it was impossible for him to answer a question put in that way; if he were asked whether in any particular part of General Wilkinson's testimony he had observed a variance, he would answer the question. He was then asked whether he had observed any inconsistency or contradiction in the evidence delivered by General Wilkinson before the judge, and that given to the grand jury? His answer was, none at all. But, said Mr. Tazewell, as I have gone so far in speaking of my impressions, it may be proper for me to state what opinion I had formed. I must say, that I saw no good reason for General Wilkinson to invite Colonel Burr to the Western country.

Mr. Hay. Do you recollect whether the testimony of Swartwout coincided with that of General Wilkinson?

A. They could not be said to oppose each other in their testimony. Mr. Swartwout was

examined first, and many of the circumstances to which he deposed were unknown to General Wilkinson.

Mr. Hay. I speak as to the conversations between Mr. Swartwout and General Wilkinson.

Mr. Tazewell. Perhaps there was this difference: General Wilkinson stated, that in the absence of Colonel Cushing, which was spoken of by both of them, Mr. Swartwout slipped into his hands the ciphered letter from Colonel Burr. Mr. Swartwout, who discovered the utmost frankness and candor in his evidence, stated the transaction in a different manner. He declared that the letter was delivered openly, without an effort to conceal it.

Mr. Hay. But they both stated the fact to be the same. that it was delivered in the absence of Colonel Cushing?

A. Yes. They both stated the fact in the same way. I would not be willing to be understood that I doubted anything Mr. Swartwout said. Although he appeared before the grand jury under very unfavorable circumstances, and my impressions were very strong against him; yet the very frank and candid manner in which he gave his testimony, I must confess, raised him very high in my estimation, and induced me to form a very different opinion of him from that which I had before entertained.

Deposition of Matthew Ellis.

SATURDAY, *October* 3.

Mr. Burr. What do you know of Dunbaugh? Did you see him at Baton Rouge?

A. I did. He told me that he had just got out of prison for debt, by paying part of the debt, and giving bail for the rest.

Q. But what passed between you?

A. When I met him I was surprised to see him; he said he had been arrested in Natchez by Lieutenant Romney.

Q. For what cause?

A. As a deserter.

Mr. McRae. At what time did you see him at Baton Rouge.

A. On Sunday, the 28th of March.

Mr. Burr. What further account did he give of himself?

A. He said that he had been sent down the river, that he had made his escape, and had demanded protection of Governor Grandpre at Baton Rouge. He said that he intended to stay there till he got his pardon from General Wilkinson, which he had written for.

Mr. Burr. His pardon for what?

A. For desertion. He told me he had descended the river with you at Captain Bissel's request; and that he had written to General Wilkinson, that if a pardon was sent to him he would come down and give information of all that he knew against you. He also put a letter into my hands for Captain Bissel.

Q. What was the purport of that letter?

A. To inform him that he repented leaving the garrison at Fort Massac in that manner, and to request him to support the statement he had made about leaving the fort. When he gave me that letter, he requested me to put it in the nearest post office, and not to let Lieutenant Romney have it.

Q. What did he propose to Captain Bissel in that letter?

A. I did not see that letter; and I know only what he told me. He told me that his letter to Captain Bissel corroborated that to General Wilkinson.

Cross-examined.

Mr. Hay. What State do you belong to?

A. I belong to Pennsylvania, but I came from Natchez to this place.

Q. When did you descend the river?

A. On the 20th of November.

Q. In what boat?

A. In my own.

Q. Are you the person who sold your boat to Blannerhasset at the mouth of Cumberland?

A. I sold it to Mr. Burr; but went down in her to Natchez.

Q. You came with certain articles?

A. Yes.

Q. On a general trading voyage?

A. Yes.

Mr. Wirt. You went down in your own boat after you sold her to Burr?

A. Yes; I was not to deliver her till I got to Natchez.

Mr. McRae. What time did you pass Blannerhasset's island?

A. I do not exactly recollect; but some time in the latter end of November.

Mr. Hay. Where did Blannerhasset and his squadron fall in with you?

A. Not before I arrived at the mouth of Cumberland.

Q. Did you sell your merchandise to Colonel Burr?

A. The greater part.

Q. What induced you to go down the river with them to Natchez, after your boat was sold?

A. Because it was not paid for.

Mr. McRae. What articles did you sell to Colonel Burr?

A. A parcel of hoes, axes, iron, and ploughs. I was not to receive any pay till I got to Natchez.

Q. Were there any boats at the mouth of Cumberland? Was Blannerhasset there?

A. I believe he was.

Q. Was Floyd? A. Yes.

Q. Tyler? A. Yes.

Q. Israel Smith? A. I expect he was.

Q. You went down with Floyd ahead?

A. Not altogether under Floyd.

Q. Why did you go ahead?

A. I did not know.

Q. When did you leave Natchez?

A. About the first of March.

Q. You were not sent to New Orleans by any body? A. No.

Q. What carried you to New Orleans?

A. Business of my own.

Q. Did you carry anything for sale to New Orleans?

A. May be I had a few deer skins and some racoon skins left.

Mr. Wirt. How long did you remain in New Orleans?

A. About eight or ten days.

Q. Did you see Colonel Burr on your return?

A. I did.

Q. Where did you see him last?

A. At Washington, in the Mississippi Territory, where I was at the trial of Colonel Burr.

Q. Were you there when the trial closed?

A. No; I went up several times to hear it, but the crowd was so great that I could not get in.

Q. Why did you go to Washington?

A. I went to see Colonel Burr for a settlement.

Q. What claims had you on Colonel Burr?

A. I do not exactly recollect the amount.

Q. Any claims for your boat?

A. Colonel Burr consented I might take back my boat.

Q. What other claims had you? Any for iron?

A. Yes, and for apples and other articles. Colonel Burr told me not to part with the axes, mattocks, and ploughs, at all events.

Mr Hay. Had you any previous acquaintance with Dunbaugh?

A. No, but I had seen him once before.

Mr. McRae. Were you never requested by any one to converse with Dunbaugh?

A. No.

Q. Were you acquainted with none of the party before you saw them at the mouth of Cumberland?

A. None, I believe.

Q. How came it to pass that you had the conversation with Jacob Dunbaugh?

A. It was accidentally. He came into the tavern where I was.

Q. Where did you intend to go when you left Pittsburg?

A. To no particular place.

Q. Did you understand nothing at the mouth of Cumberland of the purpose for which those men were gathered together?

A. I heard at the falls that they were going to settle lands.

Q. Were any propositions made to you to join the party?

A. No; I never conversed with any but Colonel Burr, and then only to make a bargain.

Q. Were you to have waited at Natchez till the arrival of Colonel Burr?

A. Yes; I got to Natchez on the 5th of January. The trial of Colonel Burr was in February.

Q. What did you wait so long for?

A. I had business with Mr. Ponsonby.

Q. Did that business detain you so long?

A. No; I chose to remain. It was partly curiosity and partly business that detained me; I might have finished my business in a day or so.

Q. Did you get payment for the articles in the boat?

A. No; I never have for any of them.

Q. Did you deliver any of them?

A. I did, some of them.

Mr. McRae. Were you summoned here?

A. Yes; Mr. Ashley sent me word to be here.

Q. Had Mr. Ashley been down the river?

A. No; Mr. Ashley was in the back part of the country.

Q. What reason had you to believe that Mr. Ashley had the power to summon you?

A. I was told that he was summoning others, and he sent me a verbal message to come, but I don't know by whom; I understood, too, from Captain Floyd, that I should be wanted.

Q. When did you receive a subpœna?

A. Not before I came here.

Deposition of Captain Bissel.

Mr. Burr. You have heard the testimony of Dunbaugh; I wish you to state everything that came within your personal knowledge; how he came off; whether on my application, or by your direction. Did you receive any message from me by Mr. Hopkins?

A. No further than a billet you sent me on the morning of the 26th. It was delivered at my quarters at Fort Massac, by Mr. Hopkins. He was introduced to me by Mr. Fort, who had been previously introduced to me by a merchant of New Haven. Mr. Fort walked up with him, and took breakfast with me. I had then heard of Colonel Burr's acquittal in Kentucky, and I supposed he was peaceably descending the river.

Mr. Wickham read the billet, in the following terms:

1.

Mouth of Cumberland, *Dec.* 25.

Dear Sir: I avail myself of the opportunity of Mr. Hopkins to offer you salutations and the compliments of the season. Having proposed to descend the river in a few days, I shall have the pleasure of paying my respects to you on my way, and of receiving your commands for the South.

I am, dear sir, very respectfully, your obedient servant, A. BURR.

Capt. Bissel, *Com'g at Massac.*
(per Mr. Hopkins.)

Mr. Burr. Did you receive any other letter from me besides that?

A. None—I had a little conversation with Mr. Hopkins—none about Colonel Burr's passing the garrison. On the evening of the 29th was the next information I received. Mr. Tyler arrived with his barge; they took supper with me. After supper, some one of the gentlemen said they must return to Colonel Burr, who would stay in the bend, above, all night. I invited some of the gentlemen to take a pallet with me, which they agreed to. Colonel Burr's boats, nevertheless, came down in the night. I had retired to bed, when my sentry hailed aloud. I arose, and, undressed, repaired to the fort. Some one said that Colonel Burr's boats were passing. I thought this a singular thing, after I had been told that Colonel Burr would stay in the bend, above. His boats went down to the bend or bayou, a mile below the fort. When I returned to the house, I found that Tyler had gone to the boats.

Mr. Burr. Is not the lower bend a good harbor?

A. It is.

Q. Is not the river just opposite to the garrison a bad one?

A. It is. I have seen boats sometimes staved on the rocks in that part of the river. I rose soon in the morning to pay my respects to Colonel Burr. I went down in my boat, and was introduced into his room. I invited him to breakfast, which he declined—I invited him to dinner, but he declined all my civilities. He asked me if I had received any news from below. I replied that I had not. He then informed me that General Wilkinson had made a compromise with the Spaniards. He said he was very sorry for it, and that General Wilkinson ought to have fought them. I observed, that I supposed General Wilkinson had acted by orders.

Mr. Burr. How came Dunbaugh to go?

A. After breakfast, while I was at my ice-house, Dunbaugh came and asked for a furlough for twenty days. He had previously asked me for a furlough to go down the river to do business. After a short time, I agreed that he should go. This happened while on parade, and not at the back of the fort, as his testimony states. It is proper to mention that a boy had come up with two billets —one for Dunbaugh, and the other for me. Here is mine. When I was in Colonel Burr's boat, he had asked me if I knew of any opportunity to send to St. Louis by the way of the lead mines, and whether he could procure an express. I told him that I had reviewed my garrison, and that I had thought of sending a messenger, as he had a good horse; that if he would bear his expenses, Dunbaugh might go.

Mr. Burr. Is it not impossible to get an express in that part of the country?

A. It is. There is no population in the neighborhood of the garrison. The Indian title is just extinguished. They are just surveying the land, but it is at present a mere military post.

[Here Mr. Wickham read the letter, in the following terms:]

2. JANUARY 30.

SIR: If you will give Sergeant Dunbaugh a furlough for twenty days, I engage that he shall conform to the terms of it. In this case, he will not go to the lead mines.

Very respectfully, your obedient servant,

A. BURR.

Mr. Burr. Was Dunbaugh inspected?

A. He was, and mustered too.

Q. Did he show his clothes?

A. He did.

Q. Did you tell him to borrow any clothes, in which he was to appear on parade?

A. I did not. His own clothes were then there, and are now in his own box at Fort Massac. He wanted to carry his clothes, but I forbade him. I gave him this furlough, with a pointed order to return at the end of twenty days.

3.

FORT MASSAC, *Dec.* 31, 1806.

Sergeant Jacob Dunbaugh, of my company, has leave of absence for twenty days from date, at which time he is to return to this garrison.

D. BISSEL, *Captain 1st. Regt. U. S. infantry, comm'g.*

Endorsement.

BRUINSBURG, *January* 23.

Sergeant Jacob Dunbaugh having expressed a wish to return to his company at Fort Massac, and there being no regular officer at this place, I have, from a respect to the public service, on his application, to request that he may be permitted to join his company.

BENJAMIN BRUIN.

Endorsed: "on hour way to Pety Gulph directed to Joseph Calverts too miles from the gulph."

When I handed him this furlough, I delivered him a small billet for General Wilkinson, informing him of what I had done: here is a copy of that letter.

4.

FORT MASSAC, *Dec.* 31, 1806.

SIR: Sergeant Jacob Dunbaugh, of my company, having solicited the indulgence of a furlough for twenty days, and Colonel Burr pledging himself that Dunbaugh should conform to the terms of it, I have thought proper to grant the indulgence, and hope it may meet your approbation.

Colonel Burr will inform you how I am and how situated. Mrs. Bissel is still confined to the house, but I think recovering.

I am, respectfully, your obedient servant.

DANL. BISSEL, *Captain.*

Gen. WILKINSON, (per Col. BURR.)

Mr. Burr. Do you remember sending me any message by Dunbaugh, to the mouth of Cumberland?

A. I remember well that I sent him to buy a beef; and told him, if he saw Colonel Burr, he was to present my compliments to him; but I did not tell him to proffer my services to Colonel Burr, nor to any one else; I am an officer of the United States only; that part of his evidence is false.

Mr. Burr. Did you receive a letter from Dunbaugh whilst he was at Baton Rouge?

A. Yes. On the 11th of June I received a letter which he wrote me from Baton Rouge. There is no date to it; the post-mark is Washington, Miss. Ter. I received it with other letters from New Orleans.—Captain Bissel then read the following letter:

5.

HONORED SIR: With sorrow I take Pen in hand to inform you that I had to tell the officers that you sent me as a Spy against Colonel Burr and had to make outt of what I new againg him I wrote that you sent me on that Purpes the thought My Captain was interrested I told them that he did not know what Burr's mening was to take some men down the River with him. My Captain thought as I had been down with him before that I cold find out what his intention was. Lieuteant Roney took me up as a Dis-

certer and put me on board of the Schooner Revenge to send me to New Orleans but I did not go he tuck my furlow from me I told Him if He would give me my furlow that I would go to the General but he would not.

I should be thankful if my Captain would send some money if their is any for me and my Boots if my Detes air paid. I wishd more than A thousand times I had staid at Fort Massac I have nothing more But still remain your humble Servant.

J„ DUNBAUGH *Sergt.*

(In the margin.) John Preehard is in due me 3 Dollars.

DAN'L BISSEL *Capt. Commanding.*

I am at Baton Rouge and will Remain until I Get a pardon.

Mr. Burr. Had J. Dunbaugh been discharged from service the year before?

A. Dunbaugh had been a faithful sergeant, but I represented to General Wilkinson the propriety of permitting him to find a substitute, who could do more service, as *he* had lost the use of one of his fingers. This defect is mentioned in the advertisement of him as a deserter.

Mr. Burr. Has he been tried yet for desertion?

A. No: I have not yet preferred a charge against him.

Q. Is he liable to a prosecution?

A. Yes, I suppose so.

Q. Did you ever make him a present of a breastplate?

A. I did, but not at the time he has stated. It was one day when I lost a son. Mr. Owens was about leaving the garrison at that time, and presented me with a very handsome breastplate. I gave my old one to my sergeant. This was about the last of October, or the beginning of November.

Q. Did you make a report to the Government, which has been published?

A. I think a letter of mine to the Secretary of War has been published, with a letter of General Jackson's.

Cross-examined.

Mr. Hay. Is this the furlough that you gave?

A. It is; but there is some endorsement on it, of which I know nothing.

Mr. Hay. Ay, that is some writing of Judge Bruin's.

Mr. Burr. Have magistrates a right to enlarge furloughs?

A. I know of no such thing in the articles of war.

Mr. Hay. Had you any previous acquaintance with Colonel Burr?

A. Yes. I had seen him at Fort Massac, in General Wilkinson's quarters.

Q. Did you know that Dunbaugh was going down the river?

A. Yes; I gave him permission; and such had been my confidence in Colonel Burr, and such my ignorance of the movements in the Western country, that had he asked me for a sergeant and six men, I should have indulged him.

Q. When you gave him his furlough, how far down the river did you expect him to go?

A. I supposed not farther than Madrid. However, I do not recollect that I gave him any particular injunction as to that point, because he was to return any time within twenty days.

Mr. Hay. You say that he was your confidential sergeant?

A. He was. I had raised him from a first corporal. He was illiterate, and I had requested him to learn to write. Perhaps I had set copies for him myself.

Q. You had a good opinion of him, then, till lately?

A. I had.

Mr. Wirt. You said that Col. Burr wanted a messenger to go to St. Louis?

A. I did.

Q. Do the lead mines lie on a land route to St. Louis?

A. They do.

Mr. Wirt. I see, in Burr's letter, that Dunbaugh was not to go by the lead mines. Did you understand that he was going by them?

A. Oh! no; I supposed that he was going down the river to New Madrid; perhaps to bring back letters. I knew nothing of Col. Burr's movements.

Q. Did you conceive that Col. Burr guarantied his return?

A. I had but a short conversation with Colonel Burr, for I was at that time busy. Dunbaugh applied to me for a furlough, but he had before applied to me for one to go to New Madrid.

Q. Then I understand you did not rely on Burr's guaranty?

A. I cannot say. When this billet was put into my hands, I was engaged on parade; and I believe I told Dunbaugh that I would see about it.

Mr. McRae. I think you said, that you knew nothing of this expedition?

A. I had heard that Col. Burr had been tried and acquitted in Kentucky. I had heard it from travelling, ignorant people, who could not give me much information.

Q. Then you had received no such information as induced you to question the propriety of his movements?

A. None. I was acquainted with his standing, when he left the Senate of the United States. I respected him as a former Vice President of the United States, and I felt disposed to treat him with all the civility which was due to his rank.

Q. When you granted this furlough to Dunbaugh, did you not advert to his engaging in Burr's service, and exhort him to obey his orders?

A. I did not. I only granted him a furlough for twenty days.

Q. Did you speak at all with Dunbaugh when he applied for the furlough?

A. I recollect to have told him that Colonel Burr had also applied for him to go. I always speak to my men when they go on furlough, to enjoin on them propriety of conduct. I did not call him to my room and give him any private instructions, as his testimony states. I might

have called him before me, and told him to treat Col. Burr with politeness. I so felt towards him both at that time and in 1805.

Mr. Burr. Have you the advertisement of desertion?

A. Yes; it is filed in court. It was read.

No. 6.

TEN DOLLARS REWARD.

FORT MASSAC, *Jan.* 19, 1807.

Deserted, on the 19th of January, 1807, when on the indulgence of a furlough, Jacob Dunbaugh, sergeant in Captain D. Bissel's company, 1st United States' regiment of infantry. He is of a Dutch descent, and is about twenty-eight years of age, five feet one and a half inches high, brown hair, blue eyes, fair complexion. He is by trade a hatter. He has lost the use of one of his fingers on the left hand, which stands crooked inward. Whoever will take up said deserter, and deliver him up to any military officer in the United States, shall receive the above reward and reasonable expenses.

DANIEL BISSEL, *Capt. com.*

[*Endorsement.*]

I do here certify that the within advertisement, among several others of the same tenor and date, was handed to me by Captain Daniel Bissel on the morning of my departure from Fort Massac, 1st of February last; which advertisements I distributed in the Territories of Mississippi and Orleans. I do further certify, that Captain Bissel requested me to make use of every exertion in my power to have the within mentioned deserter apprehended.

Given under my hand, this twenty-eighth day of July, at Nashville, in the year 1807.

THOS. A. CLAIBORNE.

When Dunbaugh overstayed his time, I wrote to some of my friends, among the rest to Lieutenant Hughes, requesting him to report to General Wilkinson the desertion of Dunbaugh; I expressed the great confidence I had in him, my anxiety lest he should have been deluded away by the followers of Colonel Burr, or lest he should be sick. If he was sick, I requested Mr. Claiborne to furnish him with some money; if he was not, to advertise him as a deserter.

Mr. Hay. Have you any objection to produce that letter?

A. I will look at it, and then determine.

I presume it would be unnecessary to state the civilities which have passed to and from Colonel Burr. On Butler's trial I was frequently with him in the morning. He had been acquainted with Mrs. Bissel from a child. He had sent her a barrel of apples from the mouth of Cumberland; and she had returned some little thing or other, such as preserves.

Examination of Judge Todd.

SATURDAY, *October* 3.

Colonel Burr. Did Colonel Lynch submit to you, for your opinion, the title-papers of Bastrop's grant?

A. Colonel Lynch showed me the title-papers on which he said the grant was founded.

Q. Did you say anything about my having acquired an interest in it?

A. No.

Q. Did you give any opinion as to the title?

A. I was not sufficiently informed of the laws of the Territory to give any decided opinion. I discovered the grant was founded on a condition which it was said had not been complied with, and I was rather inclined to doubt its validity.

Q. Were you in Kentucky during the Summer of the last year?

A. I was.

Q. Was there a good deal of alarm among the people?

A. There was.

Q. Was that owing to any acts which I had done?

A. I saw publications in the prints stating that preparations were making of boats and provisions in the State of Ohio; a publication also appeared in the "Western World," under the signature of "Observer," which excited a good deal of alarm.

Q. How many years have you been a resident of Kentucky?

A. Ever since 1786.

Q. Can you state what has been the general reputation of General Wilkinson for the last four or five years?

A. For the last four or five years I have not seen General Wilkinson.

Mr. Wirt. His reputation, as to what?

Colonel Burr. As to integrity and truth.

A. I never heard that questioned. For the last twelve months there has been an unfavorable opinion against him, owing to his official and public conduct; but I never heard of anything further against him but what related to his official and public conduct. There have been publications and republications circulated injurious to him; but whether true or false, I cannot say.

Mr. Wirt. Do you recollect what kind of an instrument Bastrop's grant is?

A. Not of the kind I have usually seen. The instrument is from the Governor of New Orleans to Bastrop, granting him so much land on condition that he would settle so many families upon it: the Government of Spain to furnish them with provisions for such a length of time. I understood from Colonel Lynch that the Government had not complied with the condition on its part.

Mr. Hay. Do you recollect whether the time for the performance of the condition had elapsed?

A. Yes, it had elapsed.

Q. Did Lynch show you anything deducing his title from Bastrop?

A. No, but he said his title was regularly deduced from Bastrop.

Q. Was it the original, or a copy of the grant you saw?

A. It was the original, in the Spanish language.

Mr. McRae. Was the only evidence of Lynch's title his own declarations? Was there no other evidence of title to him?

A. No other evidence deducing a title from Bastrop.

Evidence of Colonel McKee.

Mr. Burr. Did you see any person seized in the Mississippi Territory?

A. At Natchez I saw upwards of twenty of your party seized.

Q. When was this?

A. About the 18th of February.

Q. Was it before or after my trial?

A. It was after the trial.

Q. Did you see Mr. Graham there?

A. I saw the Governor, Colonel Claiborne, and Mr. Graham.

Q. Had you any conversation with either of those gentlemen about seizing me by military authority?

A. I did converse with Mr. Graham on that subject. I expressed my regret at seeing you seized. He told me that I should soon perceive the cause of it.

Q. Did you know of any measures for seizing me by martial law?

A. I heard that some had been taken, and these reports were still further confirmed by a letter which I received from General Wilkinson.

Q. What was in the letter?

A. The postscript stated that if I wished to make myself acceptable to the Government, I must seize Burr, Blannerhasset, Smith, Tyler, Floyd, or Ralston.

Q. Who conveyed this letter to you?

A. Commodore Shaw.

Q. "If you wished to make yourself acceptable to the Government?"

A. If you wished to tax the Government beyond denial, or some such expression.*

Q. Was any proposition made to you by Gen. Wilkinson relative to the Spanish colonies?

A. There was.

Q. Was there any invitation to you in relation to these colonies?

A. In 1805, about Christmas, I received a letter from General Wilkinson, asking me whether I could not raise a number of cavalry to follow his fortunes on a crusade to Mexico.

Q. Have you that letter?

A. I have it not here, but on the Mississippi. I do not particularly recollect its date.

Q. What number of cavalry was mentioned?

A. I know not.

Mr. Blannerhasset. At the time General Wilkinson wrote to desire you to seize me, was I in the hands of the civil authority?

A. So I understood.

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* *Copy of a postscript to a letter of General James Wilkinson to John McKee, dated*

"New Orleans, *Feb.* 8, 1807.

"If you want to distinguish yourself, and tax the Government beyond denial, go alone and seize Burr, or Blannerhasset, or Tyler, or Ralston, or Floyd, or all of them, and deliver them to the flotilla."

Cross-examined.

Mr. McRae. You held an office under the General Government?

A. I have not been in one for four years.

Q. What office was it?

A. I was agent for Indian affairs to the Choctaw nation.

Q. And when did your office cease?

A. I was removed by the President in 1802.

Q. Did you not receive a letter from Colonel Burr through the hand of Lieutenant Jackson?

A. I did.

Q. Where is that letter?

A. It is destroyed.

Mr. McRae. State its principal contents.

A. It was written on the 6th of January, 1807, and invited me to meet him at Bayou Pierre on the 13th.

Q. Do you recollect whether there was nothing more in this letter, besides the invitation?

A. I recollect nothing more. The letter itself I burnt.

Mr. Hay. Was no particular object stated in this letter?

A. No.

Q. And why, sir, did you burn that letter?

A. Because I saw men arrested for much less matter than carrying such a letter, and I put it out of my possession.

Q. You say there was a postscript to a letter which you received from General Wilkinson; what did you understand was the purport of that letter?

A. I did suppose that we should go to war with the Spaniards.

Q. Did he state that the expedition was unauthorized by Government?

A. He did not.

Mr. Wirt. He gave you, then, no impressions of an illicit object?

A. He did not at that time.

Q. You answered it?

A. Yes.

Q. Where is your answer?

A. This is my answer.

Here Mr. Hay read the following letter:

Chickasaws, *February* 26, 1807.

Dear General: Your kind remembrancer of the 3d of December I received, and had written to you immediately after at the Bluffs, but a French-Indian countryman, who promised to call on me for it, went off without doing so. I had written a great deal about recruiting in Tennessee, about cutting and slashing, and packing dollars, and enjoying *otium cum dignitate*. But "all our differences amicably settled with Spain" knocks all these Utopia to the devil, and I am again awake to the painful anxiety attendant on a state of suspense. I have requested my friend Moore to press the Secretary to decide, and I expect his answer in less than a month. Whatever my fate may be, I must always feel myself deeply your debtor for the solicitude you have manifested for me.

Has any news reached your capital from Captains Lewis and Clarke? it is rumored here that

they have been killed; I hope, sincerely, there is nothing in it.

I have the honor to be, with esteem and affection, your friend,

JOHN McKEE.

His Exc'y General WILKINSON.

Mr. Hay. Is that also your writing, dated as late as February last?

Answer. It is.

Mr. Wirt. At the time of this correspondence, and before, did you consider General Wilkinson as your friend, whose agency you were willing to employ with the Secretary of War?

A. I expected much less, sir, from his interest than his disposition to serve me.

Q. You considered him, then, as a friend, whom you would be willing to trust? A. I did.

Q. Is this your writing?

A. It is.

Here Mr. Wirt read the following letter:

CHICKASAWS, *August* 1, 1805.

DEAR SIR: Your friendly talk from Pittsburg, 13th May, I had the pleasure to receive, at this place, a few days ago. I thank you sincerely for your letter to the Secretary of War. I hope it will have the effect at least of relieving me from the most painful suspense I have ever experienced. I had addressed him myself from Tennessee just before I set out, and am now beginning to look for his answer. I would have written you sooner on the subject of my expectations, but I thought them so well founded as not to require even mentioning to the Secretary; they were founded on a direct and unsolicited promise from himself to me that I should be provided for in Louisiana as soon as the Government should be organized. This was confirmed to me afterwards through Colonel Moore and General Trigg, and last winter he repeated to several of my friends his continued disposition to serve me; but I remain as ignorant as I was two years ago in what way. I hope it may be in your quarter, and soon, for a state of suspense is a penance worse by far than fasting. I trust, like a good Catholic, that I am in a fair way for heaven, even if I should have to pass through a jail.

I think I understood from Mr. Dinsmore that he had written to you at large on the late successful negotiation with this nation; he has to-day started to Natchez, from thence to the Choctaws, where, about the beginning of October, the Commissioners are to meet that nation at Mount Dexter, and make another attempt to treat for land. I have had some talk with both the White and Red Mingoes, about securing a tract of land to a Choctaw boy that has contrived to prattle himself into my affection; this is my business here; my prospects of success are not very flattering, as I find the business must be clogged with other negotiations.

On the 28th ultimo Colonel Burr passed this on his return from New Orleans to Nashville, and I understand he intended to visit your Government.

If I am disappointed in the hope of going up the Mississippi when I leave this, I will inform you of my course and prospects.

With sincere respect and esteem, I have the honor to be, your Excellency's obedient servant,

JOHN McKEE.

His Exc'y General WILKINSON.

Mr. McRae then also read the three following letters:

CHICKASAWS, *October* 19, 1805.

DEAR GENERAL: Your friendly letter of the 8th ultimo I received by post on the 15th instant, and from some cause or other it was the most acceptable I ever received. It found me here alone, far gone in the blue devils, doubting whether I had not better expatriate myself, and try my fortune amid the storm now gathering in Europe. You cannot think it strange that I feel extremely mortified when I tell you that I have, a year past since May last, been waiting in daily expectation of receiving orders to repair, in a public capacity, to some part of your Government; this expectation was excited by the unsolicited promises of the Secretary of War. It is true he has still held out to my friends the idea that he intended to provide for me, and it must be admitted he has taken time enough to do it well. In the meantime, however, I am suffering the most painful anxiety, and my cash is exhausted to a small sum. I have always suspected Claiborne of injuring me with the Government, though he declared, with uplifted hands, to the contrary. I was informed that he had, in 1801, made some representations to you and Colonel Hawkins, founded on a report made to him by Colonel Joslyn, that I had abused him and the President, in a conversation at Mr. McIntosh's, in this nation, in very severe and improper language. I have since seen Colonel Joslyn, who gave me a certificate, of which the enclosed is a copy; for what I said of Mr. Claiborne, a candidate for an office in the State of which I am a citizen, I certainly can be accountable only to him, not to the Government that has since clothed him with the mantle of its power. If I had learned *ornate et polite dicere* to a man whose head and heart were neither of them formed to my taste on the scale of great Mingo's, perhaps I might have been fitted with an office ere this; however, *nil desperandum, Teucro duce.* I'll remain here till X'mas. The Choctaw treaty, I fear, will fall through this season, and that will not be among my least disappointments, for I had some expectation of procuring at it a tract of land for my young Choctaw. It is reported here from Cumberland that the Secretary of War has written that, if the Choctaws wish to sell land, they must send deputies to Washington.

Cressite, &c., is very catholic; but when I proceeded farther, to "bleach high," I blushed to the finger's ends; but why, I would not tell you for all my hopes in the Government—on paper I mean.

With sincere respect and esteem, I have the honor to be, your excellency's obedient servant,

JOHN McKEE.

His Exc'y Gen. WILKINSON.

The irregularity of the mail-carriers occasioned this to be a mail later than I expected. I am now informed by a letter from Mr. Dinsmore, that the Commissioners will meet the Choctaws about the 1st of November; and, this morning, I set out with your friend, General W. Colbert, to Mount Dexter, to attend the treaty. J. McK.

CHICKASAW BLUFFS, *Dec.* 26, 1806.

DEAR GENERAL: So many opportunities present themselves here for conveying a letter towards Orleans, that I would be ungrateful to leave this without at least offering you the compliments of the season, and my hearty prayers for the success of your bark on this tempestuous sea of liberty; for, with all my confidence in her staunchness, I cannot help feeling some anxiety on account of sunken rocks and the cursed pirates that infest her track.

I set out to-morrow morning for the Chickasaws; and if you should have leisure to inform me of your health, by post, I will remain there long enough to receive it, and I hope not much longer.

I have the honor to be, with very sincere respect and esteem, dear General, your ob't serv't,

JOHN McKEE.

His Exc'y Gen. WILKINSON.

NATCHEZ, *January* 25, 1807.

DEAR GENERAL: I wrote you a note from the Chickasaw Bluffs about X'mas. Soon after I set out for this place, where I have been for ten days, and will yet remain, perhaps, two weeks longer, just to laugh at the ridiculous scenes that are passing before us. Here is a wide field for conjecture, and every man takes his own direction. The Little Mingo here has assumed a military attitude to defend the altar and the throne, as well against Colonel Burr as the encroachments of the army.

I have little doubt that, ere this, you will have set me down as a Burrite, and as little that you will believe me when I assure you that, as yet, I am not; and I must know the object and the means better than I do before I can be. It is true that, having nothing to do, and hearing that some great enterprise was on foot, patronised by many great men, and winked at by the Government, I came here to profit of any opportunity that might offer of bettering my situation by honorable enterprise. As yet, I see no way open but in the face of my country's laws; and, desperate as my fortune is, I will never deliberately do an act that will prevent me from returning to the spot where I was born.

I have lately received a letter from Mr. Simpson, saying, "your friend, General W., wishes you were here, as he has it in his power to serve you."

This, to me, just now, is very interesting information; and by return of the mail will be glad to hear from you.

Need I tell you that considerable pains are taken and taking here to render your name unpopular; and by persons, too, I am informed, who speak much of the laws and constituted authorities of the country.

Your friends, Dinsmore, Freeman, and McKee, occupy a room here, and laugh at this puddle in a storm.

I have the honor to be, very respectfully, your excellency's obedient servant,

JOHN McKEE.

His Exc'y Gen. WILKINSON.

HUNSTON, *February* 16, 1807.

DEAR GENERAL: I received, a few days since, at Natchez, your favor of the 8th instant, and nothing could have given me more pleasure; for the strange distant reserve of some of my friends in this quarter, and an observation from Doctor Carmichael that my note from the Bluffs had excited some suspicions of me in a bosom that shall never be justified in harboring any, had mortified me sorely; read that note again, and if it does not speak the language of a heart that loves you, I must have been very unfortunate in expressing myself.

I never was a *Burrite*, nor can I ever give myself up to schemes of lawless plunder; it is certain that, in my present situation I might have engaged in any honorable enterprise, however hazardous, but the late one, such as it has been represented, is such as I hope no friend of mine will ever suspect me of favoring.

I have not the means, and, if I had, I have not at this moment the time, to give you much information on the state of things in this country.

May your purse keep pace with your heart, and may you live a thousand years.

Your affectionate friend,

JOHN McKEE.

His Exc'y Gen. WILKINSON.

Mr. Burr. Did you make any reply to that postscript?

Answer. I did not. I answered the letter itself.

Mr. Hay complimented Colonel McKee's letters; declaring them to be excellent *models of the epistolary style.*

Mr. Burr here observed, that a number of witnesses whom he had summoned, had gone away during his indisposition; and that he had but one more witness to produce, except to establish certain circumstances against General Eaton.

Mr. Blannerhasset then requested that a Mr. Gates might be called in on his behalf.

Testimony of Mr. Gates.

Mr. Blannerhasset. Will you state what you know about the seizing of the boats and provisions near Marietta?

A. I was present at the seizing of the boats. There were a few barrels of kiln dried corn meal on board, and a few barrels of apples belonging to Mr. Putnam.

Q. Did you see any officers on duty?

A. I saw militia officers; General Buell and his aid-de-camp, Major Clark.

Q. Were you a militia man?

A. I told them they had no right to call upon me in that character, during my present capacity.

Q. You had been used only to carry a fife, and not a musket?

A. Yes.

Q. Did they accept of your apology for not acting?

A. They said if I would attend at 12 o'clock, with my musket, I should be immediately discharged.

Q. Did you see any authority under which General Buell acted?

A. Yes. He showed me a paper, which he said was his authority from Governor Tiffin.

Q. Did you see the boat that was built for my family? What has become of it?

A. The last time I saw it, it lay in a very uneasy posture near Marietta.

Cross-examined.

Mr. Wirt. As far as I understand you, you were called on to attack the boats?

A. Yes.

Q. And you were unwilling to do it?

A. I was.

Q. That is, you were willing to whistle, and not to fight?

A. Yes.

The following deposition of Charles Fenton Mercer was then offered on the part of the accused, and read:

STATE OF VIRGINIA, *City of Richmond:*

Personally appeared before me, Edward Carrington, one of the magistrates of the city of Richmond aforesaid, Charles Fenton Mercer, of the county of Loudon, and State aforesaid, a witness summoned to attend the trial of Aaron Burr, who, being duly sworn on the Holy Evangelists of Almighty God, deposed as follows, viz: That, having been called to the neighborhood of Point Pleasant, at the mouth of the Great Kenawha, between the 20th of September and the 6th of December, 1806, to transact some business relative to an estate which he has in the county of Mason, he became acquainted with Mr. Herman Blannerhasset, through the introduction of Mr. J. Alston, of South Carolina, once a fellow-student of the deponent's in the college of New Jersey. This acquaintance commenced about the first of November, near an open boat on the Ohio, in which Mr. Alston, attended by his family, with a carriage and a pair of horses, and accompanied by Mr. Blannerhasset, was descending the river as far as Kentucky, from whence he expected to prosecute his journey home by land. The reputation which Mr. Blannerhasset had acquired for talents, learning, and taste, and an eccentric, and somewhat a romantic mode of life, rendered this unexpected interview one of the most interesting events which occurred to this deponent during his residence on the Ohio, and he accepted with much pleasure an invitation from Mr. Blannerhasset to visit his then beautiful and once much celebrated island. It is true, that about that period, and for several weeks before, reports were in circulation, that Mr. Blannerhasset was engaged with Colonel Burr in some common enterprise, to which many persons imputed a highly criminal design. But those reports, and especially the injurious suspicions often connected with them, seemed to have arisen from pre-existing prejudices against Colonel Burr, which it was not difficult to trace to an origin very remote from the design now ascribed to him. As the reports were believed and propagated by those who spoke of them with a conviction and a zeal proportioned to their ignorance or malignity, and, as they were, in themselves, most improbable, absurd, and ridiculous, the deponent considered them entitled to no serious consideration. About the middle of November, the deponent again saw Mr. Blannerhasset, at the house of Colonel Andrew Lewis, on the Ohio, three miles above Point Pleasant, where he alighted from his horse for an hour or two, in his journey from Kentucky. In a conversation which then occurred, he adverted with much sensibility to the reports above-mentioned, which had then become more current, and to which, every day was adding some new exaggeration, and declared them to be utterly false. He was the last man in the world, he said, who would be disposed to disturb the peace, or impair the prosperity of the United States. Weary of political agitations in his native country, he had sought, he added, and found, an asylum in America, the tranquillity of which he never could violate. He had, indeed, he admitted, united with Colonel Burr (whom public rumor had injured as much as himself,) in the plan of colonizing and improving a large tract of country on the Red river, originally granted by the King of Spain to one Baron Bastrop, and lately purchased by Colonel Burr of a gentleman of Kentucky. The tract contains eight hundred thousand acres, and the consideration which Colonel Burr and himself were to pay for it was $40,000; but, by distributing a part of it in hundred acre farms, among a number of emigrants, whom such an inducement, they expected, would invite to join them, they had no doubt, on the most moderate estimate, of being able to raise the value of the remainder to more than $1,000,000. Mr. Blahnerhasset declined the pressing invitation of Colonel Lewis to make a longer suspension of his journey, alleging as his reason for prosecuting it with greater rapidity, that the servant who accompanied him had been sent to him in Kentucky, by Mrs. Blannerhasset, to urge his immediate return home, for the protection of his house from the fury of a mob who had threatened to burn it down. He added, also, that he expected to leave the island in ten or twelve days after his return, as it was his intention to remove his family down the river before the severity of the approaching winter set in; and renewing his former invitation to the deponent, politely hoped he would commence his journey to the interior of Virginia within that period.

Some time after this conversation, on Saturday evening, the sixth day of December, the deponent arrived, in the course of his journey home, at the shore of Ohio opposite to the island of Mr. Blannerhasset, and having first learned, with some

surprise, that Mr. Blannerhasset was yet on the island, crossed over to his house in a violent storm of wind and rain. That evening and the following day he spent at the most elegant seat in Virginia, and in the society of Mr. Blannerhasset and his lovely and accomplished lady. He saw no other persons on the island, except their two infant children, their servants, Mr. Neale, the clerk of the court of Wood county, a Mr. Putnam, who had come from the Ohio side of the river to rent the island of the proprietor who was soon to abandon it, some young ladies who visited Mrs. Blannerhasset on Sunday morning, and two or three of the inhabitants of the Virginia shore, who came to inquire of the deponent the price of some lands which he had advertised in the adjoining county of Mason. The deponent having expressed a desire, which he had felt on visiting this country the year before, to become the purchaser of Mr. Blannerhasset's farm, he had the goodness to show him the plan and arrangement of his house. Every room within it was opened to his inspection. As he walked through its different apartments, the proprietor frequently apologized for the confusion into which its furniture was thrown by his preparation for his leaving it; and observed that the greater part of his furniture, his musical instruments, and his library, containing several thousand volumes of books, were packed up for his immediate removal. His children were also habited in their travelling dresses. Nothing, he added, delayed his departure, except the unfinished condition of the boats which were to take him down the river. Finding that Mr. Blannerhasset estimated his farm, containing one hundred and eighty acres of land, with its improvements, at $50,000, which, he remarked, was ten thousand dollars less than they had cost him, the deponent abandoned all idea of becoming their purchaser, and the rest of the time which he spent at this beautiful seat was employed in conversation with its proprietor and his family. It turned upon his removal to the Washita, the name of his new purchase. He pressed the deponent to become a participant in it, suggesting how much it would augment his fortune, and enforcing the inducement which he offered to his interest, by an assurance that the society which he invited the deponent to join, would soon become the most select and agreeable in America. He spoke of Colonel Burr as the moral head of it, and when the deponent expressed a doubt of the permanency and happiness of a union formed under such auspices, and dwelt on such traits of the general character of Col. Burr as he deemed exceptionable, Mr. Blannerhasset vindicated him with the enthusiasm of an ardent admirer and friend, and furnished the deponent with facts of which he had never before heard, and which he treasured in his memory as the foundation of further inquiry into the character of that gentleman. They related entirely to occurrences of ancient date, and on this side of the Allegany.

Mr. Blannerhasset having intended, before the deponent reached his house, to visit Marietta on Sunday evening, the deponent availed himself of a double motive to quit this attractive spot. He did not leave it, however, without regretting that the engagements of its proprietor and his own, dreary journey, but just begun in the commencement of Winter, forbade him to prolong a visit, which, although so transient, had afforded him so much pleasure. It is but a tribute of merited gratitude to add, that he left it in perfect good will to all its inhabitants. All that he had seen, heard, or felt, corresponded so little with the criminal designs imputed to Mr. Blannerhasset, that if he could have visited him with unfavorable sentiments, they would have vanished before the light of a species of evidence which, if not reducible to the strict rules of legal testimony, hath, nevertheless, a potent influence over all sensitive hearts, and which, though it possess not the formal sanction, hath often more truth than oaths or affirmations. What! will a man who, weary of the agitations of the world, of its noise and vanity, has unambitiously retired to a solitary island in the heart of a desert, and created there a terrestrial paradise, the very flowers and shrubs and vines of which he has planted, nurtured, and reared with his own hands; a man whose soul is accustomed to toil in the depths of science, and to repose beneath the bowers of literature, whose ear is formed to the harmony of sound, and whose touch and breath daily awaken it from a variety of melodious instruments—will such a man start up in the decline of life from the pleasing dream of seven years' slumber, to carry fire and sword to the peaceful habitations of men who have never done him wrong? Are his musical instruments and his library to be the equipage of a camp? Will he expose a lovely and accomplished woman and two little children, to whom he seems so tenderly attached, to the guilt of treason and the horrors of war? A treason so desperate! A war so unequal! Were not all his preparations better adapted to the innocent and useful purpose which he avowed, rather than to the criminal and hazardous enterprise which was imputed to him? Whence arose those imputations? From his union with Colonel Burr. But it is evident that he has been led to this union from his admiration of the genius and his confidence in the virtue and honor of the person with whom it has connected him. That which with a harsh-judging world is the foundation of a belief of his guilt, when thoroughly and candidly examined, carries on its face, therefore, the stamp of his innocence. Such were the sentiments with which the deponent left the island of Mr. Blannerhasset. He has only to add, that he reached Marietta after a ride of fourteen miles, in company with that gentleman, at nine o'clock at night; that he slept at the same house with him, and parted from him with much regret on Monday morning at the house of Judge Woodbridge. Mr. Blannerhasset on that day went up the Muskingum to visit his boats, and the deponent prosecuted his journey home.

Given under my hand, this twenty-first September, 1807.

E. CARRINGTON.

SATURDAY, *October* 17.

Mr. Lemuel Henry, of the Mississippi Territory, (who heretofore gave in his testimony) was again called, at the instance of Colonel Burr, and examined.

Mr. Burr. Mr. Henry, were you at the town of Washington when I came there?

A. Yes.

Q. Was there a guard established in the street and about the house in which I lodged? What message did I send to Cowles Mead concerning it; and what was his answer?

A. There was a guard stationed as you mentioned, but Mr. Mead said it was intended as much for the protection of your person as for the public safety.

Q. Did I desire you to remonstrate with Mr. Mead against the establishment of that guard as a violation of our treaty or agreement?

A. You desired me to remonstrate with him about it, and I understood you to complain of it as a violation of his agreement with you. I mentioned this to him, and he said that the guard was necessary for your protection as well as for the public safety.

Mr. McRae. Do you know anything about that armistice?

A. Only from report.

Q. Anything from Cowles Mead?

A. Not at all.

SATURDAY, *October* 3.

Elijah Jones was called on the part of Mr. Blannerhasset.

Mr. Wickham. Will you relate the conversations and transactions that passed between Mr. Blannerhasset and yourself?

The counsel for the prosecution objected to this question. Could the declarations of Mr. Blannerhasset be considered as evidence?

Mr. Wickham inquired whether the declarations previous to the act alleged as an offence might not be received as evidence?

Mr. Blannerhasset observed, that his declarations had been frequently quoted and urged against him, particularly in relation to the Mr. Hendersons. Had he not the same right to quote his own declarations when they were brought forward for his vindication?

Chief Justice. Any person who accompanied Mr. Blannerhasset may be considered as a competent witness.

Mr. Hay. Did you then go down the river?

A. I did not.

Q. Did you agree to go with Mr. Blannerhasset?

A. There were no articles of agreement between us, though I agreed to go. There was, however, nothing binding, and I did not go.

Mr. Hay. How easy would it have been for Mr. Blannerhasset to have made certain propositions to this gentleman, for the express purpose of keeping his real objects out of view!

Chief Justice. What prevented your going?

A. Because Mr. Blannerhasset went off before the time that was appointed. If he had remained, if the boats had been finished and not stopped, I certainly should have gone.

Chief Justice. Proceed with your evidence.

Witness. In the Fall of 1806, I called on Mr. Blannerhasset at Marietta, to know on what terms I could go down the river with him. I informed him that if we could agree on terms, I would go with him. He said that I should be furnished with liquors and provisions when going down the river, and that at the end of the journey I should receive one hundred acres of land: yet still the engagement was to be no ways binding upon me, and I might leave him whenever I was dissatisfied. I mentioned there was a rumor in circulation that there was something else in view besides the settlement of the Washita, and that his designs were hostile to the United States; if so, he had better inform me at once, for if he took me with him under such circumstances, he would take an enemy. He said they were not hostile to the United States. I asked him, if they were obstructed by a party in descending the river, whether they would defend themselves. He replied that he would not resist the constituted authority, or persons lawfully authorized to stop him; but if they were not lawfully authorized, the laws of the United States would bear him out in resisting. He observed, that those who went on the first to settle lands would have the most, as he would do the most to help them.

Mr. Wickham. Then your agreement was, to leave Mr. Blannerhasset whenever you pleased.

A. It was.

Q. Was the President's proclamation received before their departure?

A. I think it was not till afterward, though I am not positive.

Chief Justice. Mr. Woodbridge said that it was not received till Friday afterward.

Cross-examined.

Q. At what time did he say that he should leave the island?

A. Different times were stated. He intended to have started earlier than he did, but Colonel Barker did not finish the boats in time. He then said that he should start as soon as they were finished.

Q. Did he positively deny that he had any hostile designs against the United States?

A. He did deny it. I told him if he had any designs hostile to the United States, he had better tell me at once, and not take me in; for if he did, he would take an enemy. He lifted up his hands to Heaven, and said he had not.

Mr. McRae. Did he say that you should receive information of the object of the expedition at the mouth of Cumberland?

A. Yes; that I should get such satisfactory information at the mouth of Cumberland as would confirm me in my resolution to go on. I asked him if Colonel Burr was to meet him down the river. He said it was probable, but he did not say where; but he seemed to speak of the mouth of Cumberland as being the place where he was to meet him.

Mr. Blannerhasset. Did I not observe that information would also be given to you at Limestone or at the Falls, and at other places down the river?

A. Yes. You said that I should get better information than I had received at Marietta.

Q. Did you not understand that the further you went down the river, and the nearer you got to the Washita land, the better information you would receive about that land?

A. I understood from you that I would receive such satisfactory information down the river as would determine me to go on.

Evidence of Thomas Bodley.

Mr. Burr. Do you know of my purchases of land of Colonel Lynch?

A. I do. I think in the month of September, 1806, while Colonel Burr was in Kentucky, he and Colonel Lynch came to my office. I was clerk of the circuit court in Kentucky, and mine was an office of records. They stated to me that they were making a contract for land, and asked me to draught a deed for them. I was at that time much engaged myself; I made a memorandum of the terms which they explained to me, and directed one of the young men in the office to draught a deed. That deed did not please them, and another was draughted, which was recorded in the office of William Todd, notary public. After the deed was draughted, they showed me the plot of land, and Colonel Lynch told me that he had sold his interest or part of his interest in the Washita grant; that Colonel Burr had settled a part of the purchase money with Mr. E. Livingston, and had received the balance in Kentucky bank bills and draughts on New York. A part of the bills I myself received from Colonel Lynch in payment of a debt.

Mr. Burr. About that time was there not a great deal of conversation about a Spanish war?

A. There was a great deal.

Q. Were not expeditions against the Spanish territories a very common topic?

A. The Spanish was frequently mentioned at musters. War was considered as inevitable; and it was said to be so stated in letters from the Commander-in-Chief on the Sabine.

Q. Was there not a general ardor on the subject, especially among the younger part of the community?

A. There was. There was a great deal of zeal in some parts of the country. A great many expressed a willingness to join in the war. There are many young men in Kentucky at any time ready to engage in a war that is authorized by the Government, and particularly in one with Spain.

Cross-examined.

Mr. Hay. Is it customary in that country to have deeds recorded in a notarial office?

A. It is when the deed is to go to a different State.

Mr. Hay asked Mr. Wickham if there was any copy of that paper in court?

Mr. Wickham replied that there was not.

Mr. Hay. As the paper has been mentioned, it is better to produce it in court.

Mr. Burr. As gentlemen had said that my purchase of Washita land was all pretence, I wished to show that money had been paid on that transaction. I did not come here with my deed to establish a title.

Mr. McRae (to Mr. Bodley.) Did you see the deed?

A. I saw the original. It is not now on record, and I recollect its contents.

Q. How much land was the deed for?

A. I am not certain about the number of acres; but the impression on my mind is, that it was for three hundred thousand acres.

Mr. Hay. Did you not understand from the parties that the period had expired for complying with the conditions of Bastrop's grant?

A. I understood that it had been so from a default of the Government, but that it had afterwards renewed the grant.

Q. Was this transaction with you before or after Judge Todd was consulted?

A. It was one or two years after the consultation.

Mr. Wirt. Did you see the original Spanish grant?

A. I am not certain. I saw many papers recorded in my office, but I am not certain whether that was among them. I saw a copy in the hands of Colonel Lynch.

Mr. Hay. Did Colonel Lynch ever show any grant tranferring Bastrop's title to him?

A. I do not think he did.

Mr. Wirt. On whom were the draughts on New York drawn? A. On George M. Ogden.

Mr. Burr. Had we any conversations about a Mexican expedition?

A. Yes, frequently; and frequently he spoke about a Spanish war. He spoke several times on this subject to me and others. He thought, if there was any war with Spain, that it was the interest of the United States to carry an expedition into Mexico. He said that he himself would willingly engage, and asked me whether men could be got in Kentucky to embark in it. I told him I thought they could.

Mr. Hay. Did you make any contract with Colonel Burr for flour?

A. He said that he expected to settle the Washita land, and in the event of a war he would stipulate with his men to go against the Spaniards; and that he would take from me any quantity of flour, not exceeding two boat loads.

Evidence of Colonel Charles Lynch.

Mr. Burr. Will you relate whether I purchased any land of you, and how much?

A. Yes. You purchased my interest in Bastrop's grant, wherein were about three hundred and fifty thousand acres.

Q. Did I pay you any money?

A. Yes; about four or five thousand dollars.

Q. Did you suppose the three hundred and fifty thousand acres was exclusive of Livingston's claim?

A. I will explain. I claimed under Morehouse, and also purchased a mortgage of Stephen Wartz. I found that Edward Livingston had also purchased the same mortgage. I commenced a writ against Morehouse, and was about to commence one against Livingston, but I purchased him out. Under that compromise I was entitled to about seven hundred thousand acres. The survey was made, and marked upon the grant. I was entitled to six-tenths, and he to four-tenths of the whole grant of twelve hundred thousand acres.

Q. Was it a separate or joint interest of mine?

A. A joint interest.

Q. Was I to settle what you owed to Livingston?

A. That was my object in selling.

Mr. Hay. Had you a suit with Livingston?

A. No. I was about to commence a suit, but we compromised. I agreed to give him thirty thousand dollars for his interest. Then I sued Morehouse. Colonel Burr was to pay Livingston the amount of my purchase of him; he also paid me four or five thousand dollars in money, and was to take up certain paper which I valued at thirty thousand dollars more.

Mr. McRae. Did you receive any draughts from Colonel Burr?

A. Yes.

Q. On whom were they drawn?

A. On Mr. Ogden, of New York.

Q. Had you any grant conveying an absolute title?

A. In 1796, the petition was presented by Bastrop; in 1797, Bastrop was to furnish five hundred families, the Government to find them in provisions for six months; but it being inconvenient to the Government to furnish the provisions, a letter of office was given to Bastrop, by the Baron de Carondelet, to dispense with the necessity of introducing the families.

Q. Will you state the various proceedings which have taken place on this grant?

A. First, there was the petition, then the survey upon that, the patent, and then the letter of office.

Mr. Burr. Did you get the opinion of James Brown as to the validity of Bastrop's grant?

A. Yes; and of Mr. Gurley too. They both said that the title was good.

Mr. McRae. Do you suppose there is no necessity to carry families there now for the purpose of saving the title?

A. No; not now.

Colonel Burr. Have you an account of the nature of the soil and of the land included in the grant?

A. I have been on the land and spent several days in exploring it. I have a certificate with me signed by several respectable gentlemen, stating it to be very valuable. [Here Colonel Lynch produced the certificate.]

Mr. Hay. What is your own opinion of its value?

A. I think it very valuable.

Q. How far is it situated up the Red River from its mouth?

A. About two hundred miles. It lies on the Washita river, and extends towards the Mississippi; from which, in a direct line, it is not more than twenty or thirty-five miles.

Mr. Burr. Was your contract with me in consideration of money only, or upon condition of settlement?

A. I considered the condition of settlement the principal consideration.

Mr. McRae. What is the date of your contract with Colonel Burr?

A. Last Fall. The first thing I did was to contract with Colonel Burr, after his arrival in Kentucky.

Colonel Burr. Was there anything said about corn which you were to furnish me with?

A. Yes. I was to furnish you with a quantity of corn. I received a letter from Colonel Burr about it, when he was at the mouth of Cumberland. He wrote from the mouth of Cumberland that he should want more corn than I had agreed to furnish him with. He stated that he was going with a few friends to the lands on the Washita, and wished me to send him some more corn, and some utensils.

Q. What kind of utensils?

A. To clear two roads from the Mississippi. By cutting a road twenty-five miles, three hundred may be saved.

Q. What proportion of the land is prairie?

A. I do not know precisely; but I suppose about one hundred thousand acres.

Q. What is the character of that kind of land?

A. It is esteemed among the French and Spaniards the most valuable; because it is fit for immediate cultivation.

Mr. Hay. You spoke of a letter from Baron de Carondelet, dispensing with the settlement of the land; was that before the cession to the United States?

A. Yes; in 1797. All the transactions about it were in 1797. I have got letters stating that the commissioners appointed to adjust the claims to lands in that Territory thought it as good a title as any in Kentucky.

Mr. Wirt. Have you got a copy of your deed?

A. No.

Q. Did it contain a general or a special warranty?

A. In every conveyance of the kind, there is always a clause providing in case of an interference by Congress.

Evidence of Silas Dinsmore.

MONDAY, *October* 5.

Mr. Hay. Were you in New Orleans when General Wilkinson arrived there in November last? A. I was.

Q. Did he make any communications to you?

A. He made a very full and general statement of the situation of the country, and of his apprehensions of approaching danger.

Q. How soon after his arrival?

A. I think on the 26th or 27th of November. He arrived there on the evening of the 25th, and made his communications to me very shortly after his arrival.

Q. Were these communications made under any injunctions of secrecy?

A. They were.

Q. Were you acquainted with the state of the public mind at New Orleans at the time of the arrival of General Wilkinson?

A. I had discovered nothing unusual about that time.

Q. What was the state of the public mind after the approach of Burr was announced? Did there appear to be a considerable party disposed to favor the views of Colonel Burr?

A. A considerable party appeared to be in favor of Colonel Burr, and were much opposed to the measures of General Wilkinson.

Q. What appeared to be the general impression on the minds of the citizens? And what was their conduct before and after General Wilkinson exposed the plans of Colonel Burr?

A. Before the disclosure of those plans, it was a general subject of inquiry as to the conduct of General Wilkinson in taking post at New Orleans; and many censured the measure. About that time several numbers of the Western World appeared, in which many severe strictures were cast on General Wilkinson and others; which, after the disclosure made by General Wilkinson, at the Government House, occasioned very considerable commotions among the citizens. It became a general topic of conversation in the coffee-house, the hotels, and even in the streets. I will repeat further, that there appeared to be a large proportion of the mercantile interest in favor of General Wilkinson's conduct; some censured and some doubted. General Wilkinson condescended to ask my opinion, having previously made a full disclosure of the dangers apprehended, and of the measures which he had adopted. I did give my advice in favor of seizing every man whom he found opposed to his measures. This was after a development of the state of affairs by General Wilkinson. [*Mr. Martin.* And that not to be depended upon. *Mr. Wirt.* That will be a subject of discussion hereafter. *Mr. Martin.* I know that. *Mr. Wirt,* (in a lower tone of voice, to Mr. Martin,) *You know a good deal of those things.*]

Mr. Hay. Did you see Colonel Burr at Washington, in the Mississippi Territory?

A. Yes. I received a verbal message from him, by an unknown person, and returned an apology for not waiting on him that day, but went to see him the next day. I met him in company, but he solicited no private interview, and I had none with him.

Q. Was there any circumstance which particularly attracted your notice?

A. No. I never saw him till he was in the hands of the civil authority.

Q. Do you recollect whether in New Orleans, and while General Wilkinson was there, intelligence frequently came down the river stating the approach of Colonel Burr and his party?

[Mr. Wickham objected to the witness speaking of mere reports, as being nothing better than hearsay evidence. Mr. Wirt contended it was admissible evidence; and that it was proper to show the state of the public mind, arising from those rumors which were generally circulated, to justify the strong measures which were taken. The Chief Justice said that neither hearsay nor rumors could be regarded as legal evidence; but, if there be the slightest shade of difference in the testimony, that of rumor, in such a case as the present, was the most tolerable.]

A. There were frequent reports to that effect. Among other rumors, Mr. John Clay, a respectable merchant of New Orleans, came to General Wilkinson's quarters, on the morning of the 8th or 9th of December, and asked to see the General. When shown to him, he observed, in my presence, "I feel it my duty, General, to inform you that I have received a letter from Kentucky informing me that Colonel Burr has seized on the arsenal in Kentucky, (I think near the mouth of Kentucky river,) and has availed himself of all the arms and ordnance stores there deposited." A few minutes after, Governor Claiborne came in, and said, "General, I have received correct information, on which I can depend, that a squadron of the British fleet is cruising off the Balize."

Q. Have you ever been on service with General Wilkinson?

A. Not in a military character.

Q. Have you ever in a civil? A. Yes.

Q. What was his general reputation as to integrity?

A. I never knew anything as to his integrity, but what was purity itself. So far as his conduct came within my own knowledge, it always appeared to me to be perfectly correct.

Q. How long have you known General Wilkinson?

A. It is a little more than five years since I first knew him. I have been in some service with him for months together in the forest, while we were engaged in running the national boundary line.

Q. Have you ever discovered anything which betrayed a want of patriotism in General Wilkinson?

A. No. His patriotism was of the most ardent kind—such as I wish to possess myself, and could wish every other citizen to possess.

Q. Did he ever write to you about raising a military corps?

A. Yes; but that was predicated on the idea of a rupture with Spain.

Mr. Randolph. Have you got the letter?

A. I do not know. I have several letters from General Wilkinson, which I have on file; but I have not examined whether this particular one is among them or not.

Q. What is the date of the letter?

A. 1805.

Q. What induced you to suppose that there was a probability of a war with Spain at that time?

A. From interviews with the General, in the year 1803, and subsequent correspondence with him till 1805. The first was occasioned by the doubtful state of our negotiations with Spain; the second from the detention of a part of the ceded territory. From many circumstances, it was supposed a rupture was inevitable.

Q. What was the space of territory in dispute?

A. From the parallel of latitude of thirty-one degrees north, to the Gulf of Florida, and from the Mississippi to the river Perdido.

Colonel Burr. Did General Wilkinson offer you a reward for apprehending me?

A. I think four or five thousand dollars were offered in behalf of the Government.

Q. When was that offer made?

A. Some time in December last.

Q. Did you undertake to effect it?

A. I did, as far was practicable and expedient.

Q. Was that offer predicated on an order of the Government, or was it the fiat of the General?

A. I do not know.

Q. Did he satisfy you that he had authority for making the offer? A. I do think he did.

Q. When did you leave New Orleans?

A. On the morning of the 9th or 10th of December.

Mr. Baker. When was the offer made?

A. Just about that time.

Colonel Burr. Did you send an order to the Choctaws to take me?

A. I carried myself the proclamation of Governor Williams to the Upper Choctaws, and employed runners to carry proclamations, with instructions to intersect the paths in every direction; and wrote to the agent in the Chickasaw nation to the same effect.

Mr. Wirt. What do you mean by saying that you undertook to arrest Colonel Burr, as far as was *expedient?*

A. I meant that if I should have found him at large I should have taken him, but not out of the hands of the civil authority.

Q. Were there not officers sent up to take him?

A. Yes; and I was instructed to co-operate with them; but he being exactly where General Wilkinson wished him—in the hands of the civil authority—I advised the officers to return, and they separated.

Colonel Burr. Were you to seize me privately?

A. Yes, if practicable.

Q. Was I not reputed to be at the head of an army by General Wilkinson?

A. Yes, and by others too.

Q. How, then, were these men to take me? When were those officers sent?

A. I can inform you when I first saw them, which was on the 1st of February.

Q. Of the orders of the officers you know nothing?

A. Only what I saw—an order from Commodore Shaw to Lieutenant Jones to receive you.

Q. You said the officers returned on your advice: did you see them retire, or do you know when they left that part of the country? Had they separated before I left the town of Washington?

A. I cannot tell when you left there; but the last time I saw them was on the 5th of February, at Natchez.

Colonel Burr to Commodore Shaw. I understood that you received orders from General Wilkinson: were these orders from the Government?

A. I think they were the result of an arrangement between Governor Claiborne and General Wilkinson. I did not know, at that time, that I was subject to the orders of General Wilkinson; but always understood that I was to co-operate with him. I considered that as Governor Claiborne took the responsibility, I was to co-operate, and that the orders were given conjointly with General Wilkinson.

Colonel Burr to Mr. Dinsmore. Did General Wilkinson express any doubt of the militia?

A. He expressed no doubts of the Creoles; but he doubted the incongruous group which constituted the citizens of New Orleans.

Q. Did he doubt the civil authorities?

A. He did entertain doubts of the Judges.

Mr. Martin. Did he express any doubts of Governor Claiborne?

A. He had no doubt of the integrity of Governor Claiborne, and of his attachment to the Government. He said that they had, at one time, been on such terms as not to act together, but he was in hopes they would unite.

Q. Did he doubt Governor Mead?

A. Yes; because he did not co-operate with the General, and refused to furnish his quota of men.

Mr. Hay. Did General Wilkinson doubt the patriotism of Governor Claiborne?

A. He was far from doubting his patriotism, but said he wanted firmness.

Mr Martin. Did he doubt James Brown? [Mr. Wirt objected to such a course of interrogation, as indelicate and improper. Mr. Martin defended it, on the ground that, from the conduct of General Wilkinson, it would seem that men, even high in authority, could not be trusted.]

The following affidavit contains the substance of the testimony delivered by the witness in court, on Monday, the 5th of October, except that he was not interrogated as to the paper found in the cape of the negro boy's coat, in the handwriting of Colonel Burr; that fact having been previously established, as far as Mr. Henry's knowledge extended, by the evidence of Mr. Poindexter.

The evidence of Lemuel Henry, a resident of Washington county, Mississippi Territory.

The said Henry being at the town of Washington, in the Mississippi Territory, attending his duty as a member of the Legislative Council, was introduced to Colonel Burr, by Colonel McKee, on the first evening of the arrival of Colonel Burr at that place, after his submission to the civil power.

Colonel Burr, Colonel McKee, James Callier, and the said Henry, were alone present, when, in the course of conversation, it was mentioned by the said Callier, that if he (Colonel Burr) had gone over to Washington county, on the Mobile, and impressed upon the minds of the people there that his enterprise was a secret one against the Spaniards, and with the sanction of our Government, he might have procured men enough to have taken Mobile; at which place he would have got a sufficiency of arms and ammunition, and

armed vessels to convey his troops to whatever place he pleased. Colonel Burr then began to inquire into the situation of the Mobile, and of Washington county. In the course of the conversation, the difficulties to which the people of Washington county were subjected from the exactions of the Spaniards, and their unfriendly disposition towards us, were mentioned. Colonel Burr observed that he had seen with regret the memorials of those people treated with contempt or neglect in Congress; that, while they were reading, the members would be scraping their feet, and would pay no attention to them; and that they were no sooner read than the House passed on to some other subject. He was surprised, he said, that the people of that country had not made some exertion to release themselves from the difficulties under which they labored; that the Government having neglected them, it was a natural right, and ingrafted in the Constitution, for a people, when the Government does not secure to them those rights to which, by their situation, they are entitled, either to erect a new Government for themselves, or to take protection under such other Government as would promise them a happier situation. The expression that the right was ingrafted in the Constitution, was used with a considerable degree of emphasis by Colonel Burr, and, I confess, excited in my mind no small share of astonishment, considering his situation; nor could I account for his addressing these observations to us, unless it was that both Mr. Callier, and myself represented that part of the Territory which was particularly exposed to the exactions of the Spanish Government.

On the Sunday before Colonel Burr finally left the town of Washington, and after the boats which descended the river with him had been searched for arms, and a report made, as I understood, that there were none of any consequence found, a certain Robert A. New, who appeared to be in habits of the strictest intimacy with Colonel Burr, and lodged in the same room with him, offered to sell me a parcel of arms. The said New and myself were for several days in a treaty for a quantity of provisions, which was brought down in the boats called Colonel Burr's boats. He said that the provisions were not his private property, but that he was agent for the owners, between whom some matters were to adjust respecting them. On the day last mentioned, (viz: the Sunday before Colonel Burr left the town of Washington, and after the boats had been searched for arms,) the said New asked me how I would like to purchase a parcel of arms. I asked him how many there were. He answered, about forty or fifty, or between forty and fifty; do not recollect which, and as elegant muskets and bayonets as I ever saw. He offered them to me at a price which I considered only about one-third of their value; and assigned as a reason for selling them so low, that they were lost to them at that time, and it was better to get something for them than nothing. I observed to him jocularly, that they could not have been of much use in settling the Washita lands. He said it was unnecessary to say to me, or to any man of understanding, that the men I saw engaged in this business had no other view than that of settling a new country; that they were generally too well fixed at home to embark on so dull an enterprise; but that this was a good idea to hold out to the world; and it seemed to go down pretty well. Knowing that there had been a search for the arms, and an official report that they could not be found, I inquired of Mr. New, how they were to be got. He said that they would not be delivered to me, but would be placed where I could get them; and I think said at any place I should direct in the neighborhood. I declined making any purchase of him.

With respect to the last arrest of the partisans of Colonel Burr, when a considerable number were arrested, it arose from the following circumstances: in a few days after Colonel Burr had left the town of Washington, and was said to have escaped, and after the Governor's proclamation for his apprehension had issued, as I understood, a negro boy was discovered near the mouth of Cole's creek, (opposite to which Colonel Burr's boats were stationed,) riding on a horse which had belonged to Colonel Burr, and having on his surtout coat, as I heard. These circumstances created a suspicion; the boy was searched, and there was found sewed up in the cape of his coat a paper in these words: "If you are yet together, keep together, and I will join you to-morrow night; in the mean time put all your arms in perfect order; ask the bearer no questions; but tell him all you may think I wish to know. He does not know that this is from me, nor where I am. C. T. and D. F." This paper was proved to be in the handwriting of Colonel Burr by a Colonel Fitzpatrick, as I understood. In consequence of this discovery, a number, perhaps between twenty and thirty men, said to be adherents of Colonel Burr, were arrested and put under guard. They were not in close confinement when I saw them, nor did I ever hear of their being in that situation. They were only guarded till the alarm was over. I saw several of them going to their lodgings to dinner, and, as I understood, they were usually put on their honor to return at a particular time and place.

LEMUEL HENRY.

HENRICO COUNTY, &c.

Sworn to before me in due form, agreeably to law, 14th October, 1807.

DANIEL L. HYLTON.

Examination of Evidence.

MONDAY, *October* 5.

This day Mr. Burr proceeded to put into execution his threats against General Eaton.

Mr. Burr addressed the court. I have understood, sir, that there are certain proceedings of a court martial, of which General Eaton is the subject, and in which he was charged with offences that would disqualify him as a witness. After a satisfactory search, I find that the papers were burnt in the War Office. I have procured a deposition of the chief clerk in the War Office to show that such is the fact. This is to establish

the loss of the papers, with a view to let in oral testimony

Mr. Hay objected to this proceeding. Suppose that this deposition did actually establish the fact for which it was produced, yet why establish it in this court?

Mr. Hay said he would object to the production of the records of a court martial. He presumed that Gen. Eaton's trial was of a military nature, for some neglect or violation of military duty, and not for any charge of a civil nature. Taking this fact for granted, he presumed that the court would not permit the introduction of the original records. The accused was at liberty to go into evidence as to the general character of a witness, but not as to any particular fact. Under such circumstances, it was unnecessary to occupy the time of the court, either with this affidavit or with parol evidence.

Mr. Burr. The affidavit proves that such papers were burnt in the War office. We shall prove by a witness that such a court martial was held, and that General Eaton was found guilty of certain crimes, which would disqualify him as a witness in a court of justice. We shall prove that he has been convicted by a court martial of *crimen falsi*; and that the records of these proceedings were transmitted to the War Office, where they were burnt. We shall then produce a witness to prove these charges. Then will arise a novel question, how far a man convicted of a crime, not in a court of common law jurisdiction, is disqualified from serving as a witness in a court of common law, if it be such a crime as would amount to such a disqualification in a court of common law. When the court shall hear the proof, the question will then arise as to General Eaton's credibility and competency. We shall urge it as to both these points. We shall show that the crimes were great enough to affect his competency, and, if they were of an inferior dye, they would affect his credibility.

Mr. Hay presumed that evidence might be at any time brought up to affect the *competency* of a witness, but that if it was intended to impeach his credibility, it could only be done on the ground of general character; and that no witness's credibility could be attacked by any particular charge, unless he had received previous notice, and was permitted to prepare for his defence.

After some discussion, the Chief Justice overruled Mr. Hay's objection. Mr. Burr then read the following affidavit:

District of Columbia,
Washington county, ss.

Personally appeared before me, one of the justices of the peace of the United States in and for the county of Washington, in the District of Columbia, John Smith, chief clerk in the War Office, who, being duly sworn, deposeth and saith, that, having searched the records and papers in the War Office, there are no records of proceedings of courts martial, or any papers or proceedings relative to the same, previous to the year one thousand eight hundred and one, and that he hath understood, and verily believes, that all records and proceedings of courts martial, which were deposited in said office previous to the —— day of November, in the year one thousand eight hundred and one, were burned with the office, and a number of other papers, on that day; that, having come into the office since the above date, he never saw any record or proceedings of a court martial held on William Eaton, and that there is no record or proceeding of any such court martial now in the War Office, to the best of this deponent's knowledge and belief.

Sworn before me, this 24th day of September, A. D. 1807.

RICHARD PARROTT.

Annexed is the certificate of James Madison, Secretary of State, that the above R. Parrott is a justice of the peace, as above stated.

Evidence of Colonel Henry Gaither.

Mr. Burr. Are you acquainted with General Eaton?

Answer. I am; early in 1796.

General Eaton. I presume I have a right to know what is to be proved by this witness.

Mr. Wickham. With respect to General Eaton's right, that is out of the question; he forgets that this is a case between the United States and Mr. Burr.

Mr. Burr. I have stated twice that Colonel Gaither is to prove certain proceedings of a court martial. We shall prove the conviction of General Eaton for certain crimes; and we may, perhaps, go further, and say something as to his general character.

General Eaton. I am willing, sir, that the most minute acts of my life should be inquired into; but, sir, I have been taken by surprise; I did not suppose that the tombs were to be ransacked, to establish things which happened beyond the flood; but the records of that court martial should be produced here; the law, in every case, requires the best evidence.

Mr. Wickham. It is unfortunate that General Eaton did not know that the records were burnt.

General Eaton. You, sir, know that there are always three copies of the proceedings of a court martial. This man, who arrested me, if he had done his duty, ought to have kept one copy; the judge advocate another; and a triplicate copy of them is filed in the Department of War; but, sir, if all these copies are lost, I will supply them; and though my copy may not be *verbatim* and minute, I will furnish the general contents. I waive my demand for the copy of the record; and, if testimony be now introduced, I shall only claim the privilege of explaining, after the witness has concluded. After a few remarks from the bench, Colonel Gaither proceeded.

Witness. In the early part of 1796, my acquaintance with Captain Eaton commenced on the river St. Mary's, at a fort then building, called Fort Pickering, where he then commanded. I commanded the troops of the United States, on the Oconee. On the information of Captain Duns-

combe, I had Captain Eaton arrested, and had a court martial; the trial was held—

Mr. Burr. What offences were charged?

A. I do not recollect; I was not present at the court martial.

Mr. Burr. State them as far as you know.

Witness. There was something about dealing in the soldiers' rations, and something about selling the public corn to the inhabitants of that part of the country.

Mr. Burr. For his own profit?

A. So the report ran. The number of charges against him I do not recollect; but he was found guilty of some one, or perhaps the whole. I had the proceedings, signed by the President of the court, Captain Freeman, and Captain Eaton was suspended from command, either for three or six months.

Q. What did you do with these proceedings?

A. They were sent to the Secretary of War; they were upwards of one hundred pages. I do not know whether I confirmed the sentence or not. There were some letters from Captain Eaton, requesting me not to send them on.

General Eaton. I wish those letters produced.

Q. And what did you do with Eaton? Did you send him on?

A. He was to be under arrest for some months after the confirmation of these proceedings. Many things were laid against him; Major Commandant Freeman complained of his quarters being stoned in the night, and supposed Captain Eaton was the cause of it. I thought it best, in consequence of these complaints, to send him on to the Secretary of War, he being of no use there, so long as he was suspended.

Mr. Wirt. Was the sentence ever confirmed by the Secretary of War?

A. I do not know; I never heard.

Mr. Hay. Will you be pleased to say what charges you do recollect?

A. I cannot repeat the charges. There was something about selling public corn to the inhabitants, and clothing his soldiers with nankeens, which he had brought from Philadelphia, and on which he made a profit. However, I never attended the court; I only arrested him.

Q. Can you form any conjecture as to the number of charges?

A. I cannot. The whole record was not filled up with the charges, but they also contained the proceedings, and Captain Eaton's defence.

Q. Do you know whether you confirmed the sentence or not?

A. I do not recollect; but I believe I did not, from having received some letters from Captain Eaton, insinuating that I would not do justice, at which I was much hurt.

Q. And you do not know whether the Secretary of War confirmed the sentence?

A. I do not. I never heard anything more about it, until I heard of his being sent as Consul to Tunis.

Mr. Wirt. Then he was appointed to Tunis after all these proceedings?

Mr. McRae. When an officer is convicted of a crime, is it not customary to cashier him?

A. It depends on the nature of the offence. I have seen them sometimes cashiered, and sometimes rebuked.

Q. Was it not regular for you first to have acted on this sentence?

A. By the rules and articles of war I might have done it; and, so far, indeed, until it touched his commission.

General Eaton. Are you positive that the suspension of the court was for three or six months?

A. I do not say that the sentence ran for three or six months. There was a suspension for months or years.

Mr. McRae. For years! There is a very great difference between years and months.

Chief Justice. That is of no importance.

Mr. McRae. It certainly shows the incorrectness of the witness's memory.

Q. Did you say that General Eaton wrote you not to send the records to the Secretary of War?

A. So I understood from his letters. He wanted a conference with me.

General Eaton. Are you confident whether this request was made before or after the trial?

A. I am not confident. It has been a great while ago.

Mr. Hay. Is it customary for the Secretary of War to send an answer when a sentence is sent to him for confirmation?

A. Yes; but many letters from him to me never arrived, and some that arrived were broken open.

Q. And you sent General Eaton to the Secretary of War?

A. Yes; a vessel was going from St. Mary's to Philadelphia. I wrote to Captain Eaton to come down, and sent him on to Philadelphia for further instructions.

Mr. McRae. Did you hear from General Eaton afterwards?

A. Just before he shipped himself off to Tunis, he wrote to me.

Mr. Martin. Did the complaints cease after he went to Philadelphia?

A. Yes, we were perfectly tranquil.

Mr. Wickham. Do you recollect any charge of putting an infant on the muster-roll, and drawing rations for him?

A. No.

Q. A little boy?

A. Yes; a fifer. I thought it improper to have two fifers and a drummer on the roll.

Q. What was his name?

A. Donaldson, or Danielson.

Mr. Hay. Was this one of the charges before the court martial?

A. No.

Mr. Hay. Then you will answer no questions as to that.

Mr. Wirt. How long did you remain in the army after this? A. Till June, 1802.

Q. Did you resign then?

A. I got a letter from the Secretary of War, revoking my commission.

Mr. Hay. Were you not yourself under arrest?

A. Yes; by the civil authority, and then by the military.

Q. At what time?

A. In 1802.

Q. Was nothing done in the military arrest?

A. I considered my dismission as giving me liberty to withdraw, and I came off.

Q. By whom were you arrested?

A. By General Wilkinson.

Mr. Wirt. What officers composed the court martial that tried General Eaton?

A. Major Constant Freeman, President, Captain S. Tinsley, Captain Nichol, and some other officers; I am not certain whether Captain Davidson and Ensign McCall were the other members.

General Eaton. They were Ensign McCall and Lieutenant Thompson.

Q. Did they remain in service?

A. Freeman is now a major; Thompson is dead; McCall, I think, is in service.

Evidence of Captain Samuel Tinsley.

Mr. Burr. You were a member of the court martial that was held over General Eaton at St. Mary's?

A. I was.

Q. What were the charges?

A. I recollect but one.

Q. And what was that?

A. For speculation. When General Eaton went there, he had brought round with him some nankeens, which he had made up into summer coats, and furnished to his men on profit, as was supposed.

Q. Was he found guilty of these charges?

A. He was suspended from his command.

Mr. Hay. Do you recollect to which charge the sentence of the court applied?

A. I do not.

Mr. Wirt. Do you know whether that sentence was ever confirmed?

A. I never heard.

Mr. Wickham. What was the general character of General Eaton in the garrison? was he generally respected?

A. He was not generally liked by the officers.

Q. Do you recollect any charge about public corn?

A. I cannot, distinctly; there was something said about it. I understood that there was some corn sold by General Eaton.

General Eaton. That is true.

Mr. Wickham. We are asking the witness.

General Eaton. I will save you that trouble, sir.

Mr. Burr. The question is, were the avails applied to his private profit.

A. It was so said.

Mr. McRae. No, sir. Do *you know* anything of it?

A. I do not.

Q. How long was General Eaton suspended?

A. For three or six months.

Mr. Hay. You stated that the corn was sold by General Eaton's order; was it publicly sold?

A. I do not recollect.

General Eaton. Was not the corn sold by the commissary of the garrison, Thompson? Was it not sold through the quartermaster's department?

A. I cannot tell.

Mr. McRae. Was it sold secretly?

A. I will state what I heard; that a part of the corn was sold, and applied to the use of part of General Eaton's family: so Thompson said.

General Eaton, in explanation of Colonel Gaither's testimony,

MONDAY, *October* 5.

[Colonel Burr. Before General Eaton goes on, I wish to know how he stands before the court, whether as giving testimony, or as a party. If he is to be considered as giving testimony, we may ask him some questions. If the court thinks proper to indulge him in any observations, I have no objection.]

General Eaton. I understood, by the opinion of the court expressed a few days ago, that explanations, in the situation in which I am placed, are admissible.

Chief Justice. But you will confine yourself to explanations only.

General Eaton. In the Fall of the year 1795, I received an order from the Secretary of War to take a command on the St. Mary's, being then a Captain on the Military Peace Establishment. Colonel Gaither at that time commanded the regulars on that station, and James Seagroves was Indian agent for the Southern nations. Reports from these gentlemen represented to the Government of the United States the people of Georgia as disaffected, insurrectious, and disorganizing; that they were in the back country, under the command of General Clarke, preparing an expedition against East Florida; they represented General James Jackson as the head or patron of this description of citizens; they described the Indians as hostilely disposed, and the Spaniards as balancing between dispositions of war and peace.

[Did I state that my orders from the Secretary of War were distinct and special? I accepted the command with distinct and special instructions from the Secretary of War.]

These same reports recommended the establishment of a trading factory on the waters of the St. Mary's; and also recommended that a military post be stationed there, with a view of overawing the Indians, or resisting them, if necessary; of keeping the Spaniards in check, and an eye of vigilance toward any disorderly citizens of Georgia, who might attempt to make aggressions on the territory of a friendly neighbor. Early in the month of January, 1796, I arrived at Coleraine, a post on the waters of the St. Mary's, with directions and special instructions from the Secretary of War, pointing directly toward these objects; and shortly after took my post at the head of three companies of infantry. I ought to mention that, in passing through Savannah, I waited on General Jackson, and communicated to him the two first objects of my command. He apprehended no danger; but said that, in case of need, he would order to my assistance any number of

militia which circumstances should require. This, I confess, surprised me not a little, and gave me reason to suspect the accuracy of information given by Seagroves and Gaither. But I still concealed from General Jackson one of the objects of my command, which was to keep a watchful eye on the citizens of Georgia.

I much disliked the position assigned to us by Seagroves, on the St Mary's, as a military post. The trading-house, in freshets, was below high-water mark. There were no military sites near it; and the circumjacent country was a low pitch-pine barren. The water was bad, being that of the river St. Mary's.

Though there had been some commotions on that frontier, yet I found the Indians friendly, the Spaniards peaceable, and the citizens of Georgia tranquil, except some internal discontents concerning the Yazoo grants.

The post at Coleraine was designated by Seagroves as the best military position on the waters of the St. Mary's. I reconnoitred the country up and down the river; and nine miles above the post by land, I found an elevated site, good encamping ground, and fair springs of running water. The reports which my duty required me to make contrasted these relative positions and relative facts, and were so diametrically opposite to what had before been represented, that I soon found myself in collision with Seagroves. I had discovered that the position recommended by Seagroves was his own private property, and that he owned thirty thousand acres of land adjoining; and I was told (but this I do not assert as a fact) that Colonel Gaither was in partnership with him.

Colonel Gaither visited me at my post in the month of February, I think; and, among other friendly things, offered me a partnership in a purchase which he had made in the Yazoo grants, on advantageous terms. This I declined, as I disliked that business in all its shapes. It occurs to me, also, that Seagroves, about the same time, proposed to me, as an inducement to remove my family and settle in Camden county, to accept, as a compliment, four or five thousand acres of land in the neighborhood of Coleraine. I told him jocosely, but supposed he understood me, that he did not bid high enough.

In the Summer following, whether in July or August, I cannot say, commissioners arrived, who were appointed by the Government of the United States to treat with the Indians, to settle certain boundaries and disputes about boundaries which had not before been adjusted. About that time the misunderstanding between Colonel Gaither and Mr. Seagroves and myself became very distinct and visible; there was not much intercourse between us; and I was not desirous to become a partisan among the officers, as everybody knows the advantage which *great men* have on such occasion. This commission was composed of General Perkins, Colonel Hawkins, and George Clymer. They requested me to act as Secretary to the commission; and two of them, I think General Perkins and Colonel Hawkins, took lodgings in the block-house which I occupied. After the termination of the negotiations with the Indians, those two gentlemen proposed to reconnoitre the country, expressing much dissatisfaction with the position at Coleraine. I rode with them in different directions and at different times, and at length showed them the position nine miles above Coleraine, which I have before mentioned, called Trader's Hill. This they surveyed as far as they could by an ocular survey, and viewed it very attentively. They seemed much satisfied with it, and spent the greater part of the day there at the spring. On our return to our quarters, Colonel Hawkins asked me for a copy of my letter to the Secretary of War describing the relative position of those two posts, and also what I had stated as to the situation of the other objects under my charge. I showed him that copy. He read it attentively, and, making an apostrophe to me, said, "I think, sir, I will now inform you that the commissioners have private instructions to ascertain the truth of certain controversies between you and certain gentlemen high in trust here; and I have the pleasure to inform you that we shall bear testimony to the truth of all your statements." I confess I considered this as a great gain, if not a triumph over those gentlemen, Seagroves and Gaither; and as such I spoke of it. I heard much of the observations of the two gentlemen of whom I have spoken. Seagroves said, that Eaton must be got off this place; Gaither replied, "Leave that to me." He could not remove me by his own order, and resorted to a court martial as his dernier resort. Unwilling to suffer the embarrassment of an arrest and trial, I wrote to Colonel Gaither, and proposed an interview. Whether he condescended to answer my letter or not, I do not remember. But I was soon after arrested on five several charges; either of which, if supported, would be sufficient to cashier the best officer in the service. I cannot give those charges in their regular order, but I can give them with their specifications.

1st. General charge: Disobedience of orders. Specification. Disobedience of the orders of Colonel Gaither with respect to some of the police of the garrison, in which he had no right to interfere. But the specification was not reported, and on it, as well as the general charge, I was acquitted.

2d. General charge: Neglect of duty. The specification, amount, and result of that general charge the same as the first. I was acquitted.

Q. What was the specification of that charge?

A. Some little arrangement in the garrison as to the men.

3d. General charge: Speculation.—Specification. In paying the arrearages of bounty to some of the men of my company in goods taken from the factory, and in supplying them with certain articles of clothing. It appeared in evidence that these arrangements were with the unanimous vote of the company; and though much pains had been taken, but one solitary soldier could be found to say that he was dissatisfied, notwithstanding every one voted for the measure. My object was

to give the men clothing suited to the climate, without any private views whatever. The same arrangement had been made by every commanding officer there, and with the approbation of Gaither. On this general charge I was acquitted.

4th. General charge: Peculation.—Specification. In selling public corn. I admitted the fact, and showed in evidence, by the testimony of two commissioned officers, that this corn, about twenty-five or thirty bushels, was perishing on my hands, and was sold by the verbal order of Colonel Gaither, given in their presence, and the avails placed in the quartermaster's hands, for the purpose of procuring hospital supplies. Acquitted on the general charge.

Lastly. Fraud.—Specification. For having retained from the garrison certain rations of flour due as arrearages, and storing them in the magazine. The fact of retaining the rations and storing them in the general magazine, I also admitted; and showed in evidence, that I retained them to meet a claim of the contractor for an equal number of rations used or destroyed by the soldiers when he had laid in provisions unfit for use. The soldiers being without corn or flour, I sent to the contractor, advising him of it. He wished me to use some damaged flour, which I refused; but the soldiers, from necessity, were compelled to open several barrels, and select such as could be used. This occasioned a considerable loss, which the contractor wished me to bear. I absolutely refused, and he instituted a suit against me. When the provisions arrived, I ordered the contractor to provide a number of rations for the soldiers, equal to those to which they were entitled when he had left them without wholesome provisions. On his refusal, I retained that number for the benefit of the soldiers, and had them stored in the general magazine. I was acquitted on that charge.

For what good reason I know not, or for what good purpose I see not, except like Felix, to show the Jews peculiar favor, I was sentenced to be suspended from command only for two months. The proceedings of the court martial were sent to Colonel Gaither, whose duty it was to decide upon them. Finding that his object was not attained he did not decide upon the sentence, from what spirit of benevolence I know not; but he kept me in a burning sun, confined within the walls of my own fort, for more than a month, without letting me know the sentence of the court. At length he informed me by an order that I was to repair to the seat of Government, and receive further instructions. As I had suffered myself to be arrested by his order, I was compelled to obey, and went round to the seat of Government. I presented myself to the Secretary of War, and begged to know what standing I had as respected my rank. He said, we have been made acquainted with the unhappy misunderstandings which have existed in Georgia, and we consider you as we have always done. [Mr. Hay. Who was the Secretary of War? Answer. McHenry.] The sentence never was approved of; and President Washington pronounced on the whole proceedings, that they were a tissue of persecution and wickedness; as I was told by a gentleman who heard him use the expression.

To throw some little light on the declaration of Colonel Gaither, that I was appointed to a foreign command, I will observe that, at my own request, I was permitted to resume my command on the St. Mary's. After my orders to return to Georgia, I was detained for the purpose of attending a court martial, which was to sit at Fort Mifflin, until the extraordinary session of Congress, and until Blount's conspiracy exploded. I was then employed by the Government to apprehend certain of his associates. During which session, or about that time, our treaty with Tunis arrived, and was not fully approved by the Senate. It was ratified with the exception of three articles. A proposal was made to me by the Secretary of State to take an embassy to Tunis to ratify that treaty, and to accept of a consular agency. As I never had any predilection for a military peace establishment, I engaged to go on that service. But before I left the seat of Government, I saw Seagroves removed, and the post at St. Mary's left with a sergeant's command, which may account for the subsequent tranquillity of the place. Since which, Mr. Gaither has been permitted to retire in arrest.

Colonel Burr. Can you assign any date to the court martial which sat at Fort Mifflin?

A. I cannot.

Q. Was it in 1796?

A. If I am correct, in the extraordinary session of Congress, which I think was in 1797, I am correct as to the court martial. After I was ordered to Georgia, I remained for some time to sit as a member of the court martial. But before I could make my arrangements to leave the seat of Government, the extraordinary session of Congress had commenced.

Q. Was it the same year, and pending the extraordinary session of Congress, that you were employed to seize Romaine and others? Was silence imposed upon you by the Secretary as to the seizing of Romaine?

A. I cannot say distinctly; though secrecy might have been enjoined, yet I have no objection to state the manner of the arrest of Romaine.

Colonel Burr (to Col. Gaither.) Was speculation countenanced with the soldiers?

A. No; in no instance.

Q. Did you order the corn to be sold?

A. I know nothing about the corn, or anything about it.

Colonel Burr (to General Eaton.) On which charge were you convicted?

A. On some specification of a general charge. On every general charge I was acquitted. You know the nature of a general charge. You know, too, that, with the stern and just character of General Washington, he would keep no man in office who had been guilty of any of the charges exhibited against me.

Colonel Burr (to Colonel Gaither.) When was Seagroves removed?

A. The latter end of the same year, 1796. He was removed in consequence of a treaty with the

Indians, making some variation in our boundaries.

Colonel Gaither. General Eaton has said a great many things that I know nothing about, and never heard of before. As to land in partnership with Seagroves, and reports to the Government, I am a total stranger to either circumstance. I recommended strongly to the Secretary of War a removal of the military post from Coleraine, and recommended Trader's Hill. I found Captain Eaton and Captain Tinsley at Coleraine when I arrived there.

Mr. McRae (to Colonel Gaither.) How long were you at Coleraine before the arrival of General Eaton?

A. He was there before me.

Q. Did General Eaton go there with orders from the Secretary of War?

A. Yes; I suppose so.

Q. You suppose General Eaton had no hand in choosing the place?

A. I suppose not.

A more correct statement of the evidence of John Brokenbrough and Joseph C. Cabell, delivered in court on Wednesday, the 7th of October.

John Brokenbrough and Joseph C. Cabell, members of the grand jury, were called by Colonel Burr.

Colonel Burr. I will ask you both, gentlemen, whether General Wilkinson, before the grand jury, acknowledged that, in any of his letters he had used the words, "he was ready?"

Mr. Brokenbrough. I recollect that General Wilkinson acknowledged that, in the Winter of 1805-6, he had written to you several letters, in one of which he used the expression "what has become of the grand expedition? I fear Miranda has taken the bread out of your mouth. I shall be ready before you." He also assigned as a reason for writing such a letter, that he had done it with a view of drawing from you a full disclosure of your project; if it should be correct and patriotic, that he might unite in it; if improper, that he might reject it. I asked General Wilkinson whether he had written the letter post-marked "13th May:" he said he did not recollect.

Colonel Burr. What period was assigned to that letter containing the expressions just quoted?

A. The winter of 1805-6.

Mr. Cabell being requested by Colonel Burr to state his recollection of the evidence of General Wilkinson as to the points above-mentioned, proceeded, in substance, as follows:

General Wilkinson had stated that he had had an interview with you at St. Louis, at which you mentioned a grand project; but that you did not enter into particulars. He remarked that he had made some inquiries as to the nature of the enterprise; but you observed it was unnecessary to enter into particulars, for it was possible it might never be carried into effect. After Colonel Burr left St. Louis, General Wilkinson remarked that he had revolved in his mind the conversation which had passed between him and Colonel Burr, when he spoke of a Western enterprise; and concluded that an attack on Mexico was contemplated, which was to be carried on by the aid of a British fleet through the Gulf of Mexico; that he had written several notes to Colonel Burr with a view to ascertain his real design, between the time of their interview at St. Louis, and the commencement of the following summer; but did not appear to be positive as to the number or nature of those letters. But he remarked that his object was to draw from Colonel Burr a disclosure of the nature of the enterprise—if it were proper, that he might participate in it; but if not, that he might communicate the information to the Government. General Wilkinson, on being interrogated as to the contents of his letters, said he could not recollect precisely their terms, and but only two expressions which he had used in one of them: "I fear Miranda has taken the bread out of your mouth; I shall be ready for the grand enterprise before you are." I must repeat, that General Wilkinson did not appear to be positive as to the dates, number, or contents of those letters, but only as to these two expressions.

With respect to the letter post-marked "13th May," General Wilkinson, on being interrogated, was not positive whether he had written it, but said he believed he had.

Mr. Wickham. Do you recollect whether General Wilkinson produced a copy, which he said was a true copy of the ciphered letter?

A. I do not recollect. I recollect General Wilkinson tendered a copy.

Mr. Wickham (to Mr. Brokenbrough.) Do you recollect whether General Wilkinson produced any fair copy of the ciphered letter to the grand jury?

A. I recollect we had a newspaper in which it was published; and, as we deciphered the original, we often compared our translation with that copy, and found some variations.

Mr. Hay. Have you a copy of the ciphered letter, as translated by the grand jury?

A. I have.

Mr. Wickham stated there were material and essential variations between the translation made by the grand jury, and that published.

Mr. Cabell said, he begged leave to observe that General Wilkinson was one out of fifty witnesses examined by the grand jury, that his examination took up four days, and that such circumstances only were treasured up as were deemed material.

Mr. McRae. Have you attended to the examination of General Wilkinson before the judge? will you state whether his testimony corresponded with that delivered before the grand jury?

A. That is a very extensive question, and one which it is impossible to answer. During the examination of General Wilkinson before the judge, my attention was often call d off, and, therefore, I cannot pretend to say whether his testimony throughout corresponded with that delivered before the grand jury. If you will state any particular part of his testimony, I will endeavor to recollect whether it corresponded.

In general, as far as I have attended to the evidence of General Wilkinson, given before the

judge, the narrative is very much the same with that delivered before the grand jury, with some slight variations. For instance, I understood General Wilkinson said before the court, that but one letter passed between him and Colonel Burr, from the time of their interview at St. Louis till the commencement of the next Summer; before the grand jury, I understood him to have said some letters or notes.

The circumstance of the packet being slipped from the side pocket of Mr. Swartwout, and thrust into the hands of General Wilkinson in the absence of Colonel Cushing, at the interview at Natchitoches, was mentioned by the General to the grand jury; if the same was not stated in court, as I have understood, that makes another variance.

Mr. McRae. It was mentioned to the court by General Wilkinson.

Mr. Cabell. Then, sir, I stand corrected. I have already said I could not pretend to an accurate recollection of all General Wilkinson's testimony before the court.

Mr. Wickham (to Mr. Brokenbrough.) Do you recollect any variance between the evidence of Mr. Swartwout and General Wilkinson?

A. As to the delivery of the letter from Colonel Burr, there was no difference; but in the details of their conversations there was a very important one.

Here some desultory conversation took place between the counsel on both sides and the court, on the subject of Mr. Tazewell's reply to the question propounded to Dr. Brokenbrough. The counsel for the prosecution and the Chief Justice disagreed in their notes.

Mr. Wickham asked Mr. Cabell the same general question.

Mr. Cabell answered, that the statement of Mr. Tazewell had appeared to him to be very plain and correct, and had been delivered with his usual ability. Being called on to state how far General Wilkinson and Mr. Swartwout agreed in their testimony before the grand jury, in relation to their conversations at Natchitoches, I must say that they coincided in some respects, and differed in others. The material variance is this: Swartwout most positively denied that he had made any criminal communications whatever; and denied his having said anything about seizing. According to General Wilkinson, the communications of Swartwout were criminal; according to Swartwout, they were innocent and honorable.

As I have spoken in such high terms of Mr. Tazewell's statement, I must beg leave to except from that sentiment the inference which he drew from the manner in which Mr. Swartwout delivered his testimony before the grand jury. The manner of Mr. Swartwout was certainly that of conscious innocence; but there is other testimony in the case. I choose to suspend my opinion of characters till this investigation shall have terminated.

Evidence of Thomas Power.

SATURDAY, *October* 17.

Colonel Burr. This witness is to be examined for two purposes: first, to verify certain papers; secondly, to prove that General Wilkinson was at a certain period in the pay of the Spanish Government; and then, by other witnesses, we shall prove that his pay has continued, and that he has frequently been in the habit of receiving large sums of Spanish silver. The object is to impeach his credibility, by proving the falsehood of his declaration that he had not corresponded with the Baron de Carondelet.

Mr. McRae said it was not regular to offer proof of any particular crime to impeach the credibility of a witness. No rule of evidence is more clear than that the general character of the witness is all that should be investigated for that purpose; since every man ought to have notice to enable him to defend himself against any specific charge. He observed that General Wilkinson had, heretofore, been slanderously accused of being a pensioner of Spain; that, being desirous of giving his calumniators an opportunity of proving their charges against him, he had once requested General Washington, when he was President, and afterwards Mr. Adams, to direct a court-martial for his trial; but they, (satisfied of his innocence,) refused his request. General Hamilton also declared that he thought the charge a slander, and a trial unnecessary.

Mr. Wickham. Receiving money from the King of Spain is not an indictable offence. Our ground of defence is, that Colonel Burr's expedition was in concurrence with General Wilkinson against the dominions of the King of Spain, in case of a war. If we prove, that, at the time Wilkinson was pretending to favor Burr's expedition, and secretly determined to defeat it, he was receiving a Spanish pension; this will explain his conduct. He defeated the enterprise of Burr by hatching a charge of treason against the United States, on purpose to serve the King, whose money he was receiving.

Mr. Martin. I am not surprised that gentlemen should have so much feeling on this subject, especially the gentleman who made this objection. There can be no prosecution against a man for receiving Spanish money. Mr. Benjamin Sebastian, in Kentucky, was, indeed, accused of this as an offence, and it was proved upon him; but I have not heard, though he voluntarily resigned his office of judge, that any prosecution was instituted against him. For my part I wish there was a little more Spanish money among us; I should like to have some of it myself. We wish to show that General Wilkinson is interested in the destruction of Colonel Burr; that he has placed himself in such a situation that he must hang Colonel Burr, or be himself eternally detested. He offered to be tried by a court-martial, because he knew that the only witness against him was out of the power of the process of the United States, being in the dominions of the King of Spain.

Mr. McRae. The gentlemen have heretofore been arguing that the United States were, in fact, at war with Spain. If so, it would have been a great crime in Wilkinson, an officer of the United

States, to receive a pension from the King of Spain.

Mr. McRae also read a part of the ninth section of article first of the Constitution of the United States, which declares, that "no person holding any office of profit or trust under them, shall, without the consent of Congress, accept of any present, emolument, office, or title of any kind whatever, from any King, Prince, or foreign State." Would it not, then, said Mr. McRae, be a crime in General Wilkinson, holding a commission under the Government of the United States, to violate the Constitution by receiving a present from the King of Spain? Being admitted to be a crime, it cannot, under the rule of law which I have mentioned, be offered in evidence. If, in fact, any money was received by him, it might have been in commercial intercourse with some Spanish officer; and, if he had been informed in time of the accusation against him, he might have explained the circumstance, and shown that such was the case.

Mr. McRae also remarked the inconsistency of the arguments of the counsel for Colonel Burr; their insisting that his intentions were perfectly innocent, (being merely the settlement of the Washita lands,) and yet, attempting to brand General Wilkinson with guilt, for being a participator in those intentions. If they were both equally guilty, this would not render Aaron Burr less criminal.

Mr. Wickham. We never said that General Wilkinson and Colonel Burr were equally guilty. What I said was, that both were engaged in an honorable enterprise in the event of a war with Spain. What we charge General Wilkinson with is, having united with Colonel Burr, and then deserting him; turning traitor, and representing the case quite different from the truth.

The Chief Justice. It is absolutely necessary to hear the testimony to judge of the fact. The only difficulty is, that it does not appear, under the impressions I now have, what effect it can have. If it was proved that General Wilkinson had been a pensioner of the Court of Spain, it could have no influence on the case.

Mr. Wickham. We say that General Wilkinson had an interest with the King of Spain, and, in order to preserve the dominions of that monarch which he knew were about to be attacked, he withdrew from Colonel Burr, and represented an enterprise, which was perfectly innocent and eventual, as one highly criminal.

Mr. Martin. General Wilkinson, by betraying Colonel Burr, had a double motive: the one was to acquire favor with his own Government; the other with the King of Spain.

The Chief Justice. I do not understand it to be your object to prove a continuing pension.

Colonel Burr. Our object is to prove the receipt of fourteen thousand and odd dollars at one time, and some knowledge of the payment of other sums of money to General Wilkinson.

Colonel Burr (to Mr. Power.) Are you acquainted with Alexis Bon Ami?

A. Yes.

Q. Do you know his signature?

A. I think I do.

Q. Is he a justice of the peace in New Orleans?

A. Yes.

[Here Colonel Burr produced a certificate from the office of the Secretary of State, showing that Mr. Bon Ami was a justice of the peace for New Orleans.]

Q. Are you acquainted with the signatures of Messrs. Derbigny and Mercier?

A. With both, very well.

Q. Will you look at those papers? (showing him their depositions, signed by them respectively, and attested by Bon Ami, a justice of the peace for New Orleans.)

Mr. Power said he believed the signatures to those depositions were in the handwriting of the persons whose names were annexed to them.

Colonel Burr. Do you know whether Mr. Mercier was subpœnaed to attend here?

A. I believe he was. I heard him say that he was subpœnaed, but the afflictions of his family were such, arising from the death of his father-in-law, that he could not possibly attend.

Q. Do you know why Mr. Derbigny is not here? do you know whether he was subpœnaed?

A. I heard him say he was.

Q. Why did he not attend?

A. I heard him say it would be the utter ruin of his family if he were to take such a long and expensive journey, and, in the meantime, neglect his business.

Q. Is he a man upon whose personal exertions his family depend for a subsistence?

A. I believe so.

Colonel Burr (to Mr. Power.) Do you know of any correspondence in cipher by General Wilkinson with Baron Carondelet?

[Mr. Hay objected to the question on the grounds before stated; and because the answer, whether it be in the negative or affirmative, could have no influence on the cause.

Mr. Wickham said that General Wilkinson, in the course of his examination, had been asked whether he had been in the habit of corresponding with the Baron Carondelet in cipher, and had answered "No;" but immediately afterwards said "he did not recollect." He admitted that the answer of General Wilkinson was hastily given; but still, if we are able to prove that he had been in the habit of corresponding with the Baron Carondelet in cipher, his saying that he did not recollect such a correspondence will have a direct tendency to weaken his testimony. If a witness has sworn to a particular fact, although immaterial to the cause, the opposite party may falsify that part, for the purpose of impeaching the credibility of the witness.]

Colonel Burr repeated the last question to Mr. Power. Do you know of any correspondence in cipher by General Wilkinson with the Baron Carondelet?

Mr. Power (addressing the judge.) I hope the court will indulge me with a few remarks, in order to show the delicacy and hardship of the situation in which I am placed. I had, for many

years previous to the cession of Louisiana to the United States, been a Spanish officer and a Spanish subject. [Question. Are you a Spanish officer now? Answer. Yes.] My domicile is in New Orleans, but I reside there under a stipulation in the treaty, which allows that privilege. Under this safeguard and protection I was residing and little expected that I should be disturbed or molested for doings, of which I know nothing. On the 16th of August, an attorney or agent of Colonel Burr presented me with a subpœna. I objected to receiving the subpœna, saying that it was irregular and illegal, first, because no writ could be served on Sunday; and secondly, because it ought to have come through the hands of the marshal of the district. I soon found that my objections were nugatory. I had heard that several others had been subpœnaed, and were excused from attending by giving their affidavits. I offered to do the same, and to declare that I was totally ignorant of Burr's plans.

Those objections of mine were not admitted; nor would my affidavit be received. On my expressing a reluctance to attend, I was given to understand, by the agent of Col. Burr, that by the same authority which was exercised on Knox last Winter, and by which he was put on board a ship and confined with malefactors, I should be treated in the same way. This, I confess, had more weight with me than all his logic. [Col. Burr. Are you about to object to answering the question? A. I am, sir.] I believe it is a fact too generally known that for several years prior to running the boundary line between the United States and the Spanish provinces, I was employed as an agent for my Government.

Mr. Hay. Are you going to answer the question as to the correspondence?

A. I am about to show my situation to be so delicate, that I cannot, consistently with honor, answer it; nor can I answer any question which may operate against the King my master.

Colonel Burr. Had you any mercantile connexion with General Wilkinson?

A. I had not.

Colonel Burr said that he did not think that there had been any pretext offered which would justify an evasion of the question.

Mr. Power. What would be the amount of the deposition of a man, who, in the very act of deposing, was breaking his most sacred engagements, and pronouncing himself a perjured villian?

Colonel Burr. Are you under the obligation of an oath as to the transaction?

A. I am under the obligation of the honor of an officer; an obligation of the highest dignity, which was imposed upon me when I accepted the badge of my office. I never did repeat any set form of words; the mere formulary of an oath was never proposed to me; and my superior officer knew my sentiments too well to offer me such an insult. Such a proposition I should have rejected with disdain and indignation.

Mr. Wickham said that, however unpleasant it might be to Mr. Power to answer the question, or whatever his ideas might be as to his ordinary engagements, still it was necessary, for the sake of justice, that the question should be answered. Mr. Power's being an officer of the King of Spain could not release him from the obligation to give evidence in a court of justice. He was now here, within the power of the court, and would be dealt with as any other citizen of the United States.

The Chief Justice said the question must be answered, though he was very sorry that the necessity existed. The objection to answer was not a valid one.

Mr. Power. I have already said that when the interest of the King, my master, is implicated, I will not answer. The court may take what measures it pleases. (Addressing Colonel Burr:) Place yourself in my situation, Colonel Burr; put your hand upon your own bosom, and say what you would do yourself.

Mr. Martin (in a plaintive tone of voice) begged Mr. Power to recollect that the life of a man was at stake—a man who was prosecuted with rigor by his own Government. He must recollect the importance and necessity of calling in the aid of all the evidence which can be procured to exempt him from unmerited punishment.

Mr. Power. I feel full well the situation of Colonel Burr, but I have more at stake than Colonel Burr: I have my honor, my reputation, which are more dear to me than life or property. What would my family, my children, do with property, if these were violated?

Mr. Wickham said he would not press the answer at this time, nor apply to the court to take the necessary measures to enforce it, but would give Mr. Power a few hours to reflect. He will be expected to attend here at three o'clock, at which time the same question will be repeated.

Mr. Power attended a little before three o'clock, and remained for several minutes after; but Mr. Wirt being then in the midst of his argument, he was not called until after he had left the court-room. He was again introduced on Monday.

Colonel Burr offered to read the depositions of Messrs. Mercier and Derbigny.

Mr. Hay objected, both because it was improper to read depositions where the witnesses might be had, and because they contained matter improper to be given in evidence. He instanced the deposition of Mr. Stoddart, which the court would not suffer to be read; although, besides being subpœnaed, he (Mr. Hay) had written him several letters pressing his attendance. He said that the absence of the witnesses could not be justified on the grounds stated by them. The excuse offered by one was nothing but the death of his father-in-law; and by the other, was, that the distance and expense attending the journey, and the losses of his personal exertions for a subsistence to his family, would produce utter ruin to them if he were to attend. Many other witnesses had attended under circumstances much more oppressive.

The counsel for Colonel Burr contended that there was a wide difference between the case of Mr. Stoddart and that of these witnesses. Mr. Stoddart was convenient to the court, and his attendance might be enforced. Besides, they did

not understand the deposition of Mr. Stoddart to be absolutely, but only provisionally rejected; and that it might be read, if his attendance could not be procured.

The Chief Justice decided that the depositions might be read if they contained no matter which was improper to be given in evidence. [It was finally agreed that the judge should take the depositions, and select such parts as were legal evidence.]

MONDAY, *October* 19.

After Mr. Wirt had finished his excellent speech, the examination of several witnesses took place.

The question concerning Mr. Power's refusal to give evidence recurred. That gentleman was still determined not to reveal any political transactions in which he had been employed as an officer of the Spanish Government.

The counsel for Colonel Burr insisted that he should be compelled to state all that he knew concerning a correspondence between General Wilkinson and the Baron de Carondelet.

The Chief Justice observed that the existence of such a correspondence could be of importance in the present case no further than that it might be considered as discrediting General Wilkinson's declaration, that he did not recollect his having carried on a correspondence with the Baron de Carondelet, in a cipher similar to that which was used by Colonel Burr. He said that the object of that correspondence would, if explained, have no effect on his decision, relative to the motion now before him. He therefore required Mr. Power to answer questions as to the existence of such a correspondence, but not as to its objects.

Mr. Power was then examined, and stated that a correspondence, in a complicated cipher, in which a small dictionary was used, was carried on for some time between General Wilkinson and the Baron de Carondelet, but whether it was the same as that used by Colonel Burr he did not know.

Evidence of Lieutenant Jacob Jackson, delivered in court, on Monday the 19th of October, 1807, which evidence was revised, and again sworn to by him, on Tuesday the 20th of the same month, in the form of a deposition.

I, Jacob Jackson, a second lieutenant in the regiment of artillerists, do certify and say, that, on the 3d or 4th day of January, 1807, Aaron Burr arrived at the Chickasaw Bluffs, in the night time, with one boat, and sent to the commanding officer of the garrison, wishing to know whether he could have quarters in the garrison during the night. Being the commanding and only officer there, I informed the messenger that the said Burr could be accommodated. Accordingly, he came to the garrison in company with several other gentlemen; and the next morning he asked me whether I had heard of the attempts made in Kentucky to prosecute him, under an apprehension that he was about to invade the Spanish dominions. I answered that I had not. He then went on to observe that he had been prosecuted, but that nothing could be made out against him; that he was going on a project which many wished to know, but that from their inquisitiveness he was not disposed to gratify them. "It was a project, however," said he, "which was honorable to myself, and which would be the making of those who should follow me, provided they survived the undertaking." He continued to observe that the subjects of Spain were in a very distressed situation, and that his project would tend to relieve them from the tyranny of their Government. I was then asked by him what I thought the opinion of my brother (a member of Congress) was on the subject. I answered that I did not know. He then asked me what I thought of such a project myself. I answered, that, if the United States were going to war with Spain, I should be very glad to embark in the enterprise. On which he remarked, that the leading characters in the United States did not mean openly to carry on a war against the Spaniards, but that they secretly favored his views. I then told him that, if such was the case, I was willing to engage in the enterprise; and, after telling me again that the leading men in the United States (by which I supposed he meant to include the heads of departments) approved his measures, he remarked that he wished to engage young men; that he wished me to go with him, for one; and that, in case I complied, he would give me a captain's commission. Fully believing, from the conversation and high standing of said Aaron Burr, that a war was secretly to be carried on by the United States, against some of the territories of Spain, I finally consented to engage under him. He then observed that I might probably want some money to raise a company. I replied that I did not want more than was sufficient to take me home, and mentioned one hundred and fifty dollars. He inquired whether I could not let him have some arms and ammunition. I replied that I had a small supply of these articles, but that I did not think myself authorized to furnish him. On which he observed, that he had got some at another garrison, and that I should be justified in supplying him. To which I replied, that I did not wish to implicate myself. He then requested me to let some of my men repair two or three muskets, and run him some balls, (the lead he procured at the public factory,) as he wanted, in descending the Mississippi, to kill game for the use of himself and the residue of his men who were behind; and I accordingly suffered the muskets to be repaired and the balls to be run.

In the course of various conversations, he frequently requested me to let him have some soldiers to go with him, which I as often refused. At last, he wished me to let him have a soldier to carry a letter to Colonel John McKee, in the Chickasaw nation; and, on my refusal, he requested me to give one of my soldiers a pass for twenty days, and observed, that if he did not return, I could not be blameable. This I also refused. In the course of this conversation, he asked me whether I could not then go with him, or soon follow him, and take with me the soldiery under my command. In answer to which, I remarked (being somewhat alarmed at his propositions) that I was

about to send in my resignation; and that, as soon as I was discharged from the service, I had no objection to following him; but that I could not undertake to seduce the soldiery from their duty while I held a commission. I also observed, that my family was respectable, and that I would not do anything to injure the feelings of my relations, or to wound my reputution as an officer; and that, whatever might be his projects, I did not wish to hear anything more about them, unless they were honorable. To which he replied, that his views were honorable, and that, by complying with his request, I should not incur any blame; that many of the Army were actually engaged with him, and that he expected to derive great assistance from the present military force; that General Eaton was coming round with the Navy, and that he expected soon to receive ten thousand stands of arms. He moreover observed, that as he was acquainted with my father, he should like to have me join him, and the sooner I did it the better. I replied, that it might be some time before I could receive an answer to my resignation, but that, when I did, I would follow him, provided I found him patronized by the United States. He then observed, that it would not do to delay business, and would therefore furnish me with money to raise a company. He asked me the expense of a man to carry a letter to Colonel McKee, in the Chickasaw nation. I replied, about fifteen dollars. He then asked me how many Indians I thought Colonel McKee could raise in the Choctaw nation. My reply was, that I did not know; but that Colonel McKee had resided there some time, and his influence was probably considerable.

On the morning of the 6th of the said January, just before he started down the Mississippi, on my entering the room where the said Burr was, he said to me, there is something for you on the mantel-tree piece, over the fire; on which I took from thence one hundred and fifty dollars in bank notes, and a draft on John Smith for five hundred dollars, which he at the same time presented me, observing that a draft was easier carried than money; that as to a receipt for the money, he should not take any; and that, in case I disliked his plans, he relied on my honor to return it. This money and draft were given me by the said Burr for the express purpose of raising a company of men to join him, and for building a boat calculated to ascend currents, particular instructions about which he gave me.

He further observed, that he *intended to fix himself in the Spanish dominions, and there proclaim his intentions;* that if I was not informed of them before he left the Bluffs, he wished me, on my way to Virginia, to call on General Tupper, at Marietta, to whom he should communicate his intentions, as soon as he had fixed himself in the Spanish dominions, and that he would communicate them to me. And, at the same time, he gave me a letter to said Tupper, which I burned as soon as I received the President's proclamation. And, on his leaving the Bluffs, he pressed me to leave the garrison in fifteen days, and not to wait for the acceptance of my resignation: and, on my way down the Mississippi, to endeavor to get as many of the soldiery at the Bluffs to accompany me as possible.

And further this deponent saith not.

JACOB JACKSON,
Lieutenant regiment of artillerists.

HENRICO COUNTY, *sct:*

Sworn to before me, in due form, agreeable to law, this 20th October, 1807.

DANIEL L. HYLTON,
Justice of the Peace for said county.

CITY OF RICHMOND, *sct:*

This day, the 21st of October, 1807, Thomas Ritchie, editor of the Enquirer, published in this city, made oath before me, a magistrate of the said city, that the ten half sheets annexed hereto, containing opinions of the Circuit Court of the United States for the fifth circuit and district of Virginia, in the case of Aaron Burr, &c., were printed in the Enquirer, from the original manuscript furnished by Chief Justice Marshall; and that the proof sheets were always submitted to his inspection and correction.

Given under my hand, the day and year above written.

WM. RICHARDSON, *Mayor.*

Opinion of the court on the motion made by the counsel for the United States, Monday, May 25, 1807, to commit Aaron Burr for treason, after the grand jury were sworn, and before the indictment was laid before them.

TUESDAY, *May* 26.

The court delivered the following opinion, on Mr. Hay's motion for commitment:

In considering the question which was argued yesterday, it appears to be necessary to decide:

1st. Whether the court, sitting as a court, possesses the power to commit any person charged with an offence against the United States.

2d. If this power be possessed, whether circumstances exist in this case which ought to restrain its exercise.

The first point was not made in the argument, and would, if decided against the attorney for the United States, only change the mode of proceeding. If a doubt can exist respecting it, that doubt arises from the omission, in the laws of the United States, to invest their courts, sitting as courts, with the power in question. It is expressly given to every justice and judge, but not to a court.

This objection was not made on the part of Colonel Burr; and is now mentioned, not because it is believed to present any intrinsic difficulty, but to show that it has been considered.

This power is necessarily exercised by courts in discharge of their functions, and seems not to have been expressly given, because it is implied in the duties which a court must perform; and the judicial act contemplates it in this light. They have cognizance of all crimes against the United States;

they are composed of the persons who can commit for those crimes; and it is obviously understood by the Legislature, that the judges may exercise, collectively, the power which they possess individually, so far as is necessary to enable them to retain a person charged with an offence, in order to receive the judgment which may finally be rendered in his case. The court say this is obviously understood by the Legislature, because there is no clause expressly giving to the court the power to bail or to commit a person, who appears in the discharge of his recognisance, and against whom the attorney for the United States does not choose to proceed; and yet the 33d section of the judicial act evinces a clear understanding in the Legislature, that the power to take bail is in possession of the court.

If a person shall appear in conformity with his recognisance, and the court passes away without taking any order respecting him, he is discharged. A new recognisance, therefore, or a commitment on the failure to enter into one, is in the nature of an original commitment; and this power has been uniformly exercised.

It is believed to be a correct position, that the power to commit, for offences of which it has cognizance, is exercised by every court of criminal jurisdiction, and that courts, as well as individual magistrates, are conservators of the peace.

Were it otherwise, the consequence would only be, that it would become the duty of the judge to descend from the bench, and, in his character as an individual magistrate, to do that which the court is asked to do.

If the court possesses the power, it is certainly its duty to hear the motion which has been made on the part of the United States; for, in cases of the character of that under consideration, its duty and its power are co-extensive with each other. It was observed, when the motion was made, and the observation may now be repeated, that the arguments urged, on the part of the accused, rather prove the motion on the part of the United States unnecessary, or that inconveniences may result from it, than the want of a legal right to make it.

The first is, that the grand jury being now in session, ready to receive an indictment, the attorney for the United States ought to proceed by bill, instead of applying to the court, since the only purpose of a commitment is to bring the accused before a grand jury. This statement contains an intrinsic error, which destroys its operation. The commitment is not made for the sole purpose of bringing the accused before a grand jury; it is made for the purpose of subjecting him, personally, to the judgment of the law, and the grand jury is only the first step towards that judgment.

If, as has been argued, the commitment was simply to detain the person until a grand jury could be obtained, then its operation would cease on the assembling of a grand jury; but such is not the fact. The order of commitment retains its force while the jury is in session; and, if the prosecutor does not proceed, the court is accustomed to retain a prisoner in confinement, or to renew his recognisance to a subsequent term.

The arguments drawn from the general policy of our laws, from the attention which should be bestowed on prosecutions, instituted by special order of the Executive, from the peculiar inconveniences and hardships of this particular case, from the improper effects which inevitably result from this examination, are, some of them, subject for the consideration of those who make the motion, rather than of the court, and others go to the circumspection with which the testimony in support of the motion ought to be weighed, rather than to the duty of hearing it.

It has been said that Colonel Burr already stands charged with treason, and that, therefore, a motion to commit him for the same offence is improper; but the fact is not so understood by the court. The application to charge him with treason was rejected by the judge, to whom it was made, because the testimony offered in support of the charge did not furnish probable cause for the opinion that the crime had been committed. After this rejection, Colonel Burr stood, so far as respected his legal liability to have the charge repeated, in precisely the same situation as if it had never been made. He appears in court now as if the crime of treason had never before been alleged against him; that it has been alleged, that the Government had had time to collect testimony for the establishment of the fact; that an immense crowd of witnesses are attending for the purpose; that the prosecutor, in his own judgment, has testimony to support the indictment, are circumstances which may have their influence on the motion for a commitment, or on a continuance, but which cannot deprive the attorney for the United States of the right to make his motion. If he was about to send up a bill to the grand jury, he might move that the person he designed to accuse should be ordered into custody, and it would be in the discretion of the court to grant or to reject the motion.

The court perceives, and regrets, that the result of this motion may be publications unfavorable to the justice, and to the right decision of the case; but, if this consequence is to be prevented, it must be by other means than by refusing to hear the motion. No man, feeling a correct sense of the importance which ought to be attached by all to a fair and impartial administration of justice, especially in criminal prosecutions, can view, without extreme solicitude, any attempt which may be made to prejudice the public judgment, and to try any person, not by the laws of his country and the testimony exhibited against him, but by public feelings, which may be, and often are, artificially excited against the innocent as well as the guilty. But the remedy, for a practice not less dangerous than it is criminal, is not to be obtained by suppressing motions, which either party may have a legal right to make.

It is the choice of the prosecutor, on the part of the United States, to proceed with his motion; it is the opinion of the court that he may open his testimony.

OPINION OF THE COURT,

On the question, whether Jacob Dunbaugh's affidavit, taken at New Orleans, and certified by B. Cenas, Justice of the Peace, was admissible as evidence on the motion for commitment—pronounced Thursday, May 28.

The Chief Justice pronounced the opinion of the court in the following words:

On the part of the United States, a paper purporting to be an affidavit, has been offered in evidence, to the reading of which two exceptions are taken:

1st. That an affidavit ought not to be admitted where the personal attendance of the witness could have been obtained;

2dly. That this paper is not so authenticated as to entitle itself to be considered as an affidavit.

That a magistrate may commit, upon affidavits, has been decided in the Supreme Court of the United States, though not without hesitation. The presence of the witness to be examined by the committing justice confronted with the accused is certainly to be desired, and ought to be obtained, unless considerable inconvenience and difficulty exist in procuring his attendance. An *ex parte* affidavit, shaped, perhaps, by the person pressing the prosecution, will always be viewed with some suspicion, and acted upon with some caution; but the court thought it would be going too far to reject it altogether. If it was obvious that the attendance of the witness was easily attainable, but that he was intentionally kept out of the way, the question might be otherwise decided.

But the particular case before the court does not appear to be of this description. The witness resides at a great distance; and there is no evidence that the materiality of his testimony was known to the prosecutors or to the Executive in time to have directed his attendance. It is true that general instructions, which would apply to any individual, might have been sent, and the attendance of this or any other material witness obtained under those instructions; but it would be requiring too much to say that the omission to do this ought to exclude an affidavit. This exception, therefore, will not prevail.

The second is, that the paper is not so authenticated as to be introduced as testimony on a question which concerns the liberty of a citizen.

This objection is founded on two omissions in the certificate.

The first is, that the place at which the affidavit was taken, does not appear;

The second, that the certificate of the Governor does not state the person who administered the oath to be a magistrate, but goes no further than to say, that a person of that name was a magistrate.

That, for aught appearing to the court, this oath may or may not, in point of fact, have been legally administered, must be conceded.

The place where the oath was administered not having been stated, it may have been administered where the magistrate had no jurisdiction, and yet the certificate be perfectly true. Of consequence, there is no evidence before the court that the magistrate had power to administer the oath, and was acting in his judicial capacity.

The effect of testimony may often be doubtful, and courts must exercise their best judgment in the case; but of the verity of the paper there ought never to be a doubt. No paper-writing ought to gain admittance into a court of justice as testimony, unless it possesses those solemnities which the law requires. Its authentication must not rest upon probability, but must be as complete as the nature of the case admits of. This is believed to be a clear legal principle. In conformity with it is, as the court conceives, the practice of England and of this country, as is attested by the books of forms; and no case is recollected in which a contrary principle has been recognised. This principle is, in some degree, illustrated by the doctrine with respect to all courts of a limited jurisdiction. Their proceedings are erroneous, if their jurisdiction be not conclusively shown. They derive no validity from the strongest probability that they had jurisdiction in the case; none, certainly, from the presumption that, being a court, a usurpation of jurisdiction will not be presumed. The reasoning applies in full force to the actings of a magistrate whose jurisdiction is local. Thus, in the case of a warrant, it is expressly declared that the place where it was made ought to appear.

The attempt to remedy this defect, by comparing the date of the certificate given by the magistrate with that given by the Governor, cannot succeed. The answer given at bar to this argument is conclusive. The certificate wants those circumstances which would make it testimony, and without them no part of it can be regarded.

The second objection is equally fatal. The Governor has certified that a man of the same name with the person who has administered the oath is a magistrate, but not that the person who has administered it is a magistrate.

It is too obvious to be controverted, that there may be two or more persons of the same name; and, consequently, to produce that certainty which the case readily admits of, the certificate of the Governor ought to have applied to the individual who administered the oath. The propriety of this certainty and precision in a certificate, which is to authenticate any affidavit to be introduced into a court of justice, is so generally admitted, that I do not recollect a single instance in which the principle has been departed from.

It has been said that it ought to appear that there are two persons of the same name, or the court will not presume such to be the fact. The court presumes nothing. It may or may not be the fact, and the court cannot presume that it is not. The argument proceeds upon the idea that an instrument is to be disproved by him who objects to it, not that it is to be proved by him who offers it. Nothing can be more repugnant to the established usage of courts.

How is it to be proved that there are two persons of the name of Cenas in the Territory of Orleans? If, with a knowledge of several

weeks, perhaps months, that this prosecution was to be carried on, the Executive ought not to be required to produce this witness, ought the prisoner to be required, with the notice of a few hours, to prove that two persons of the same name reside in New Orleans?

It has been repeatedly urged that a difference exists between the strictness of the laws which would be applicable to a trial in chief, and that which is applicable to a motion to commit for trial.

On the reality of this distinction the present controversy affords conclusive proof. At a trial in chief, the accused possesses the valuable privilege of being confronted with his accuser. But there must be some limit to this relaxation, and it appears not to have extended so far as to the admission of a paper not purporting to be an affidavit, and not shown to be one.

When it is asked whether every man does not believe that this affidavit was really taken before a magistrate, it is at once answered that this cannot affect the case. Should a man of probity declare a certain fact within his own knowledge, he would be credited by all who knew him, but his declaration could not be received as testimony by the judge, who firmly believed him. So a man might be believed to be guilty of a crime, but a jury could not convict him, unless the testimony proved him to be guilty of it. This judicial disbelief of a probable circumstance does not establish a wide interval between common law and common sense. It is believed, in this respect, to show their intimate union.

The argument goes to this: that the paper shall be received and acted upon as an affidavit, not because the oath appears to have been administered according to law, but because it is probable that it was so administered.

This point seems to have been decided by the Constitution.

"The right of the people," says that instrument, "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the places to be searched, and the person or things to be seized."

The cause of seizure is not to be supported by a probable oath, or an oath that was probably taken, but by oath absolutely taken. This oath must be a legal oath; and if it must be a legal oath, it must legally appear to the court to be so. This provision is not made for a final trial; it is made for the very case now under consideration. In the cool and temperate moments of reflection, undisturbed by that whirlwind of passion with which in those party conflicts which most generally produce acts or accusations of treason the human judgment is sometimes overthrown, the people of America have believed the power even of commitment to be capable of too much oppression in its execution, to be placed, without restriction, even in the hands of the National Legislature. Shall a judge disregard those barriers which the nation has deemed it proper to erect?

The interest which the people have in this prosecution has been stated; but it is firmly believed that the best and true interest of the people is to be found in a rigid adherence to those rules which preserve the fairness of criminal prosecutions in every stage.

If this was a case to be decided by principle alone, the court would certainly not receive this paper. But if the point is settled by decisions, they must be conformed to.

It has been said to be settled in the Supreme Court of the United States by admitting the affidavit of Wilkinson, to which an exception was taken, because it did not appear that the magistrate had taken the oaths prescribed by law. It was said that, as by law he could not act until he had taken the oaths and he was found acting, it must be presumed that this prerequisite was complied with; that is, that his acting as a magistrate under his commission was evidence that he was authorized to act.

It will not be denied that there is much strength in the argument; but the cases do not appear to be precisely parallel.

The certificate that he is a magistrate, and that full faith is due to his acts, implies that he has qualified, if his qualification is necessary to his being a complete magistrate, whose acts are entitled to full faith and credit.

It is not usual for a particular certificate, that a magistrate has qualified, to accompany his official acts.

There is no record of his qualification, and no particular testimonial of it could be obtained.

These observations do not apply to the objections which exist.

But it is said that the certificate is the same with that in General Wilkinson's affidavit.

If this objection had been taken and overruled, it would have ended the question. But it was not taken, so far as is now recollected, and does not appear to have been noticed by the court. It is not recollected by the judge who sat on that occasion to have been noticed. A defect, if it be one, which was not observed, cannot be cured by being passed over in silence.

The case in Washington was a civil case, and turned upon the point, that no form of the commission was prescribed, and, consequently, that it was not necessary to appear on the face of it that it was directed to magistrates.

That it was the duty of the clerk to direct it to magistrates, and he should not be presumed to have neglected his duty in a case in which his performance of it need not appear on the face of the instrument.

That the person intending to take this exception ought to have taken it sooner, and not surprise the opposite party when it was too late to correct it.

But the great difference is, that the privy examination was a mere ministerial act; the administering an oath is a judicial act.

The court is of opinion that the paper, pur-

porting to be an affidavit made by Dunbaugh, cannot be read, because it does not appear to be on oath.

Opinion on the motion for a writ of subpœna duces tecum, to be directed to the President of the United States, pronounced June 13, 1807.

The discussion of this question was at length waived, when the Chief Justice delivered the following opinion on the motion to issue a *subpœna duces tecum*, directed to the President of the United States. The object of the motion now to be decided is to obtain copies of certain orders understood to have been issued to the land and naval officers of the United States for the apprehension of the accused; and an original letter from General Wilkinson to the President, in relation to the accused, with the answer of the President to that letter, which papers are supposed to be material to the defence. As the legal mode of effecting this object, a motion is made for a *subpœna duces tecum* to be directed to the President of the United States.

In opposition to this motion, a preliminary point has been made by the counsel for the prosecution. It has been insisted by them that, until the grand jury shall have found a true bill, the party accused is not entitled to subpœnas or to the aid of the court to obtain his testimony.

It will not be said that this opinion is now, for the first time, advanced in the United States; but certainly it is now, for the first time, advanced in Virginia. So far back as any knowledge of our jurisprudence is possessed, the uniform practice of this country has been to permit any individual, who was charged with any crime, to prepare for his defence, and to obtain the process of the court for the purpose of enabling him so to do. This practice is as convenient, and is as consonant to justice as it is to humanity. It prevents, in a great measure, those delays which are never desirable, which frequently occasion the loss of testimony, and which are often oppressive, that would be the inevitable consequence of withholding from a prisoner the process of the court, until the indictment against him was found by a grand jury. The right of an accused person to the process of the court, to compel the attendance of witnesses, seems to follow necessarily from the right to examine those witnesses; and, wherever the right exists, it would be reasonable that it should be accompanied with the means of rendering it effectual. It is not doubted that a person, who appears before a court under a recognisance, must expect that a bill will be preferred against him, or that a question concerning the continuance of the recognisance will be brought before the court. In the first event, he has the right, and it is, perhaps, his duty, to prepare for his defence at the trial. In the second event, it will not be denied that he possesses the right to examine witnesses on the question of continuing his recognisance. In either case, it would seem reasonable that he should be entitled to the process of the court, to procure the attendance of his witnesses.

The genius and character of our laws and usages are friendly, not to condemnation at all events, but to a fair and impartial trial; and they, consequently, allow to the accused the right of preparing the means to secure such a trial. The objection that the attorney may refuse to proceed at this time, and that no day is fixed for the trial, if he should proceed, presents no real difficulty. It would be a very insufficient excuse to a prisoner who had failed to prepare for his trial, to say that he was not certain the attorney would proceed against him. Had the indictment been found at the last term, it would have been, in some measure, uncertain whether there would have been a trial at this, and still more uncertain on what day that trial would take place; yet subpœnas would have issued returnable to the first day of the term; and if, after its commencement, other subpœnas had been required, they would have issued returnable as the court might direct In fact, all process, to which the law has affixed no certain return day, is made returnable at the discretion of the court.

General principles, then, and general practice, are in favor of the right of every accused person, so soon as his case is in court, to prepare for his defence, and to receive the aid of process of the court, to compel the attendance of his witnesses.

The Constitution and laws of the United States will now be considered for the purpose of ascertaining how they bear upon the question.

The eighth amendment to the Constitution gives to the accused, in all criminal prosecutions, a right to a speedy and public trial, and to compulsory process for obtaining witnesses in his favor. The right given by this article must be deemed sacred by the courts, and the article should be so construed as to be something more than a dead letter. What can more effectually elude the right to a speedy trial than the declaration that the accused shall be disabled from preparing for it, until an indictment shall be found against him? It is certainly much more in the true spirit of the provision which secures to the accused a speedy trial, that he should have the benefit of the provision which entitles him to compulsory process as soon as he is brought into court.

This observation derives additional force from the consideration of the manner in which this subject has been contemplated by Congress. It is obvious, by the intention of the National Legislature, that, in all capital cases, the accused shall be entitled to process before indictment found. The words of the law are: "and every such person or persons, accused or indicted of the crimes aforesaid, (that is, of treason, or any other capital offence,) shall be allowed and admitted, in his said defence, to make any proof that he or they can produce by lawful witness or witnesses, and shall have the like process of the court, where he or they shall be tried, to compel his or their witnesses to appear at his or their trial, as is usually granted to compel witnesses to appear on the prosecution against them."

This provision is made for persons accused *or* indicted. From the imperfection of human

language, it frequently happens that sentences which ought to be the most explicit are of doubtful construction; and in this case, the words "accused *or* indicted" may be construed to be synonimous to describe a person in the same situation, or to apply to different stages of the prosecution. The word *or* may be taken in a conjunctive or a disjunctive sense. A reason for understanding them in the latter sense is furnished by the section itself. It commences with declaring that any person who shall be accused *and* indicted of treason, shall have a copy of the indictment, and at least three days before his trial. This right is obviously to be enjoyed after an indictment, and, therefore, the words are "accused *and* indicted." So, with respect to the subsequent clause, which authorizes a party to make his defence, and directs the court, on his application, to assign him counsel. The words relate to any one accused *and* indicted. But when the section proceeds to authorize the compulsory process for witnesses, the phraseology is changed. The words are, "and every such person or persons accused *or* indicted," &c.; thereby adapting the expression to the situation of an accused person both before and after indictment. It is to be remarked, too, that the person so accused *or* indicted, is to have "the like process to compel his or their witnesses to appear at his or their trial, as is usually granted to compel witnesses to appear on the prosecution against them." The fair construction of this clause would seem to be that, with respect to the means of compelling the attendance of witnesses to be furnished by the court, the prosecution and defence are placed by the law on equal ground. The right of the prosecutor to take out subpœnas or to avail himself of the aid of the court in any stage of the proceedings previous to the indictment is not controverted. This act of Congress, it is true, applies only to capital cases; but persons charged with offences not capital have a Constitutional and legal right to examine their testimony, and this act ought to be considered as declaratory of the common law in cases where this Constitutional right exists.

Upon immemorial usage, then, and upon what is deemed a sound construction of the Constitution and law of the land, the court is of opinion that any person charged with a crime in the courts of the United States has a right, before as well as after indictment, to the process of the court, to compel the attendance of his witnesses. Much delay and much inconvenience may be avoided by this construction; no mischief which is perceived can be produced by it. The process would only issue, when, according to the ordinary course of proceeding, the indictment would be tried at the term to which the subpœna is made returnable, so that it becomes incumbent on the accused to be ready for his trial at that term.

This point being disposed of, it remains to inquire whether a *subpœna duces tecum* cannot be directed to the President of the United States, and whether it ought to be done in this case?

This question originally consisted of two parts. It was at first doubted whether a subpœna could issue, in any case, to the Chief Magistrate of the nation; and, if it could, whether that subpœna could do more than direct his personal attendance; whether it could direct him to bring with him a paper which was to constitute the gist of his testimony?

While the argument was opening, the attorney for the United States avowed his opinion that a general subpœna might issue to the President, but not a *subpœna duces tecum*. This terminated the argument on that part of the question. The court, however, has thought it necessary to state briefly the foundation of its opinions that such a subpœna may issue.

In the provisions of the Constitution and of the statute which gave to the accused a right to the compulsory process of the court, there is no exception whatever. The obligation, therefore, of those provisions is general; and it would seem that no person could claim an exemption from them but one who would not be a witness. At any rate, if an exception to the general principle exists, it must be looked for in the law of evidence. The exceptions furnished by the law of evidence (with one only reservation) so far as they are personal, are those only whose testimony could not be received.

The single reservation alluded to is the case of the King. Although he may, perhaps, give testimony, it is said to be incompatible with his dignity to appear under the process of the court. Of the many points of difference which exist between the First Magistrate in England and the First Magistrate of the United States, in respect of the personal dignity conferred on them by the Constitution of their respective nations, the court will only select and mention two. It is a principle of the English constitution that the King can do no wrong; that no blame can be imputed to him; that he cannot be named in debate.

By the Constitution of the United States, the President, as well as every other officer of the Government, may be impeached, and may be removed from office on conviction of high crimes and misdemeanors.

By the constitution of Great Britain, the Crown is hereditary, and the Monarch can never become a subject.

By that of the United States, the President is elected from the mass of the people, and, on the expiration of the time for which he was elected, returns to the mass of the people again.

How essentially this difference of circumstances must vary the policy of the laws of the two countries in reference to the personal dignity of the Executive chief will be perceived by every person. In this respect, the First Magistrate of the Union may more properly be likened to the First Magistrate of a State—at any rate under the former confederation; and it is not known ever to have been doubted that the Chief Magistrate of a State might be served with a *subpœna ad testificandum*.

If, in any court of the United States, it has ever been decided that a subpœna cannot issue to the President, that decision is unknown to this court.

If, upon any principle, the President could be construed to stand exempt from the general provisions of the Constitution, it would be because his duties as Chief Magistrate demand his whole time for national objects. But it is apparent that this demand is unremitting, and if it should exist at the time when his attendance on a court is required, it would be known on the return of the subpœna, and would rather constitute a reason for not obeying the process of the court, than a reason against its being issued. In point of fact, it cannot be doubted that the people of England have the same interest in the service of the Executive Government, that is, of the Cabinet council, that the American people have in the service of the Executive of the United States, and that their duties are as arduous and as unremitting. Yet it has never been alleged that a subpœna might not be directed to them.

It cannot be denied, that, to issue a subpœna to a person filling the exalted station of the Chief Magistrate, is a duty which would be dispensed with much more cheerfully than it would be performed; but, if it be a duty, the court can have no choice in the case.

If, then, as it is admitted by the counsel for the United States, a subpœna may issue to the President, the accused is entitled to it of course; and whatever difference may exist with respect to the power to compel the same obedience to the process, as if it had been directed to a private citizen, there exists no difference with respect to the right to obtain it. The guard furnished to this high officer to protect him from being harassed by vexatious and unnecessary subpœnas, is to be looked for in the conduct of a court after those subpœnas have issued, not in any circumstance which is to precede their being issued.

If, in being summoned to give his personal attendance to testify, the law does not discriminate between the President and a private citizen, what foundation is there for the opinion, that this difference is created by the circumstance that his testimony depends on a paper in his possession, not on facts which have come to his knowledge otherwise than by writing? The court can perceive no foundation for such an opinion. The propriety of introducing any paper into a case as testimony, must depend on the character of the paper, not on the character of the person who holds it. A *subpœna duces tecum*, then, may issue to any person to whom an ordinary subpœna may issue, directing him to bring any paper of which the party praying it has a right to avail himself, as testimony, if, indeed, that be the necessary process for obtaining the view of such paper.

When this subject was suddenly introduced, the court felt some doubt concerning the propriety of directing a subpœna to the Chief Magistrate, and some doubt also concerning the propriety of directing any paper in his possession, not public in its nature, to be exhibited in court. The impression that the questions which might arise in consequence of such process were more proper for discussion on the return of the process than on its issuing, was then strong on the mind of the judges; but the circumspection with which they would take any step which would, in any manner, relate to that high personage, prevented their yielding readily to those impressions, and induced the request that those points, if not admitted, might be argued. The result of that argument is a confirmation of the impression originally entertained. The court can perceive no legal objection to issuing a *subpœna duces tecum* to any person whatever, provided the case be such as to justify the process.

This is said to be a motion to the discretion of the court. This is true; but a motion to its discretion, is a motion not to its inclination but to its judgment, and its judgment is to be guided by sound legal principles.

A *subpœna duces tecum* varies from an ordinary subpœna only in this, that a witness is summoned for the purpose of bringing with him a paper in his custody. In some of our sister States, whose system of jurisprudence is erected on the same foundation with our own, this process, we learn, issues of course. In this State it issues not absolutely, of course, but with leave of the court. No case, however exists, as is believed, in which the motion has been founded on an affidavit, in which it has been denied, or in which it has been opposed. It has been truly observed, that the opposite party can regularly take no more interest in the awarding a *subpœna duces tecum* than in the awarding an ordinary subpœna. In either case he may object to any delay, the grant of which may be implied in granting the subpœna; but he can no more object regularly to the legal means of obtaining testimony which exists in the mind, than in the papers of the person who may be summoned. If no inconvenience can be sustained by the opposite party, he can only oppose the motion in the character of an *amicus curiæ*, to prevent the court from making an improper order, or from burdening some officer by compelling an unnecessary attendance. This court would certainly be very unwilling to say that, upon a fair construction, the Constitutional and legal right to obtain its process to compel the attendance of witnesses does not extend to their bringing with them such papers as may be material in the defence. The literal distinction which exists between the cases is too much attenuated to be countenanced in the tribunals of a just and humane nation. If, then, the subpœna be used without inquiry into the manner of its application, it would seem to trench on the privileges which the Constitution extends to the accused; it would seem to reduce his means of defence within narrower limits than is designed by the fundamental law of our country, if an overstrained rigor should be used with respect to his right to apply for papers deemed by himself to be material. In the one case, the accused is made the absolute judge of the testimony to be summoned; if, in the other, he is not to judge absolutely for himself, his judgment ought to be controlled only so far as it is apparent that he means to exercise his privileges, not really in his own defence, but for purposes which the court ought to discountenance. The court would not lend its

aid to motions obviously designed to manifest disrespect to the Government, but the court has no right to refuse its aid to motions for papers to which the accused may be entitled, and which may be material in his defence.

These observations are made to show the nature of the discretion which may be exercised. If it is apparent that the papers are irrelative to the case, or that, for State reasons, they cannot be introduced into the defence, the *subpœna duces tecum* would be useless; but, if this is not apparent, if they may be important in the defence, if they may be safely read at the trial, would it not be a blot in the page which records the judicial proceedings of this country, if in a case of such serious import as this the accused should be denied the use of them?

The counsel for the United States take a very different view of this subject, and insist that a motion for process to obtain testimony should be supported by the same full and explicit proof of the nature and application of that testimony, which would be required on a motion which would delay public justice; which would arrest the ordinary course of proceeding, or which would in any other manner affect the rights of the opposite party. In favor of this position has been urged the opinion of one, whose loss as a friend and as a judge, I sincerely deplore; whose worth I feel, and whose authority I shall at all times greatly respect. If his opinion were really opposed to mine, I should certainly, revise, deliberately revise, the judgment I had formed; but I perceive no such opposition.

In the trials of Smith and Ogden, the court in which Judge Patterson presided required a special affidavit in support of a motion made by the counsel for the accused for a continuance and for an attachment against witnesses who had been summoned and had failed to attend.

Had this requisition of a special affidavit been made as well as a foundation for an attachment, as for a continuance, the cases would not have been parallel; because the attachment was considered by the counsel for the prosecution merely as a mean of punishing the contempt; and a court might certainly require stronger testimony to induce them to punish a contempt than would be required to lend its aid to a party in order to procure evidence in a cause. But the proof furnished by the case is most conclusive, that the special statements of the affidavit were required solely on account of the continuance.

Although the counsel for the United States considered the motion for an attachment merely as a mode of punishing for contempt, the counsel for Smith and Ogden considered it as compulsory process to bring in a witness, and moved a continuance until they could have the benefit of this process. The continuance was to arrest the ordinary course of justice, and therefore the court required a special affidavit, showing the materiality of the testimony before this continuance could be granted. *Prima facie* evidence could not apply to the case, and there was an additional reason for a special affidavit. The object of this special statement was expressly said to be for a continuance.

Colden proceeded: "The present application is to put off the cause on account of the absence of witnesses, whose testimony the defendant alleges is material for his defence, and who have disobeyed the ordinary process of the court. In compliance with the intimation from the bench yesterday, the defendant has disclosed, by the affidavit which I have just read, the points to which he expects the witnesses who have been summoned will testify.

"If the court cannot, or will not issue compulsory process to bring in the witnesses, who are the objects of this application, then the cause will not be postponed.

"Or if it appears to the court that the matter disclosed by the affidavit might not be given in evidence if the witnesses were now here, then we cannot expect that our motion will be successful. For it would be absurd to suppose that the court will postpone the trial on account of the absence of witnesses whom they cannot compel to appear; and of whose voluntary attendance there is too much reason to despair; or on account of the absence of witnesses, who, if they were before the court, could not be heard on the trial." (Page 12.)

This argument states unequivocally the purpose for which a special affidavit was required.

The counsel for the United States considered the subject in the same light. After exhibiting an affidavit for the purpose of showing that the witnesses could not probably possess any material information, Mr. Sanford said: "It was decided by the court yesterday that it was incumbent on the defendant, in order to entitle himself to a postponement of the trial, on account of the absence of these witnesses, to show in what respect they are material for his defence. It was the opinion of the court that the general affidavit in common form would not be sufficient for this purpose; but that the particular facts expected from the witnesses must be disclosed, in order that the court might, upon those facts, judge of the propriety of granting the postponement." (Page 27.)

The court frequently treated the subject so as to show the opinion that the special affidavit was required only on account of the continuance; but what is conclusive on this point is, that, after deciding the testimony of the witnesses to be such as could not be offered to the jury, Judge Patterson was of opinion that a rule to show cause why an attachment should not issue ought to be granted. He could not have required the materiality of the witness to be shown on a motion the success of which did not, in his opinion, in any degree, depend on that materiality; and which he granted, after deciding the testimony to be such as the jury ought not to hear. It is then most apparent that the opinion of Judge Patterson has been misunderstood, and that no inference can possibly be drawn from it opposed to the principle which has been laid down by the court. That principle will, therefore, be applied to the present motion.

The first paper required is the letter of General Wilkinson, which was referred to in the Message of the President to Congress. The application of that letter to the case is shown by the terms in which the communication was made. It is a statement of the conduct of the accused, made by the person who is declared to be the essential witness against him. The order for producing this letter is opposed—

1st. Because it is not material to the defence.

It is a principle universally acknowledged, that a party has a right to oppose to the testimony of any witness against him the declarations which that witness has made at other times on the same subject. If he possesses this right, he must bring forward proof of those declarations. This proof must be obtained before he knows positively what the witness will say; for if he waits until the witness has been heard at the trial, it is too late to meet him with his former declarations. Those former declarations, therefore, constitute a mass of testimony which a party has a right to obtain, by way of precaution, and the positive necessity of which can only be decided at the trial.

It is with some surprise an argument was heard from the bar, insinuating that the award of a subpœna on this ground gave the countenance of the court to suspicions, affecting the veracity of a witness who is to appear on the part of the United States. This observation could not have been considered. In contests of this description the court takes no part; the court has no right to take a part. Every person may give in evidence testimony such as is stated in this case. What would be the feelings of the prosecutor, if in this case the accused should produce a witness completely exculpating himself, and the attorney for the United States should be arrested in his attempt to prove what the same witness had said upon a former occasion, by a declaration from the bench that such an attempt could not be permitted, because it would imply a suspicion on the court that the witness had not spoken the truth? Respecting so unjustifiable an interposition but one opinion would be formed.

The second objection is, that the letter contains matter which ought not to be disclosed.

That there may be matter, the production of which the court would not require, is certain; but that in a capital case, the accused ought not in some form to have the benefit of it, if it was really essential to his defence, is a position which the court would very reluctantly deny. It ought not to be believed that the department which superintends prosecutions in criminal cases would be inclined to withhold it. What ought to be done under such circumstances presents a delicate question, the discussion of which, it is hoped, will never be rendered necessary in this country. At present it need only be said that the question does not occur at this time. There is certainly nothing before the court which shows that the letter in question contains any matter the disclosure of which would endanger the public safety. If it does contain such matter, the fact may appear before the disclosure is made. If it does contain any matter which it would be imprudent to disclose, which it is not the wish of the Executive to disclose, such matter, if it be not immediately and essentially applicable to the point, will, of course, be suppressed. It is not easy to conceive that so much of the letter as relates to the conduct of the accused can be a subject of delicacy with the President. Every thing of this kind, however, will have its due consideration on the return of the subpœna.

3dly. It has been alleged that a copy may be received instead of the original; and the act of Congress has been cited in support of this proposition.

This argument presupposes that the letter required is a document filed in the Department of State, the reverse of which may be, and most probably is, the fact. Letters addressed to the President are most usually retained by himself. They do not belong to any of the Departments. But were the fact otherwise, a copy might not answer the purpose. The copy would not be superior to the original, and the original itself would not be admitted, if denied, without proof that it was in the handwriting of the witness. Suppose the case put at the bar, of an indictment on this letter for a libel, and on its production it should appear not to be in the handwriting of the person indicted. Would its being deposited in the Department of State make it his writing, or subject him to the consequence of having written it? Certainly not. For the purpose, then, of showing the letter to have been written by a particular person, the original must be produced, and a copy could not be admitted.

On the confidential nature of this letter, much has been said at the bar, and authorities have been produced, which appear to be conclusive. Had its contents been orally communicated, the person to whom the communications were made could not have excused himself from detailing them, so far as they might be deemed esssential in the defence. Their being in writing gives no additional sanctity; the only difference produced by that circumstance is, that the contents of the paper must be proved by the paper itself, not by the recollection of the witness.

Much has been said about the disrespect to the Chief Magistrate, which is implied by this motion, and by such a decision of it as the law is believed to require.

These observations will be very truly answered by the declaration that this court feels many, perhaps peculiar motives, for manifesting as guarded a respect for the Chief Magistrate of the Union as is compatible with its official duties. To go beyond these would exhibit a conduct which would deserve some other appellation than the term respect.

It is not for the court to anticipate the event of the present prosecution. Should it terminate as is expected on the part of the United States, all those who are concerned in it should certainly

regret that a paper which the accused believed to be essential to his defence, which may, for aught that now appears, be essential, had been withheld from him. I will not say that this circumstance would in any degree tarnish the reputation of the Government, but I will say that it would justly tarnish the reputation of the court which had given its sanction to its being withheld. Might I be permitted to utter one sentiment with respect to myself, it would be to deplore most earnestly the occasion which should compel me to look back on any part of my official conduct with so much self-reproach as I should feel, could I declare, on the information now possessed, that the accused is not entitled to the letter in question, if it should be really important to him.

The propriety of requiring the answer to this letter is unquestionable. It is alleged that it most probably communicates orders showing the situation of this country with Spain, which will be important on the misdemeanor. If it contains matter not essential to the defence, and the disclosure is unpleasant to the Executive, it certainly ought not to be disclosed. This is a point which will appear on the return.

The demand of the orders which have been issued, and which have been, as is alleged, published in the Natchez Gazette, is by no means unusual. Such documents have often been produced in the courts of the United States and the courts of England. If they contain matter interesting to the nation, the concealment of which is required by the public safety, that matter will appear upon the return. If they do not, and are material, they may be exhibited.

It is said they cannot be material, because they cannot justify any unlawful resistance which may have been employed or meditated by the accused. Were this admitted, and were it also admitted that such resistance would amount to treason, the orders might still be material, because they might tend to weaken the endeavor to connect such overt act with any overt act of which this court may take cognisance.

The court, however, is rather inclined to the opinion that the subpœna, in such case, ought to be directed to the head of the department in whose custody the orders are, and the court must suppose that the letter of the Secretary of the Navy, which has been stated by the attorney for the United States to refer the counsel for the prisoner to his legal remedy for the copies he desired, alluded to such a motion as is now made.

The affidavit on which the motion is grounded has not been noticed. It is believed that such a subpœna as is asked ought to issue, if there exist any reason for supposing that the testimony may be material, and ought to be admitted. It is only because the subpœna is addressed to those who administer the Government of this country, that such an affidavit was required as would furnish probable cause to believe that the testimony was desired for the real purposes of defence, and not for such as this court will forever discountenance.

Opinion delivered June 18, 1807, *on the question whether Charles Willie should be compelled to answer certain questions.*

As soon as the court assembled, the Chief Justice delivered the following opinion in the case of Willie:

In point of law the question now before the court relates to the witness himself. The attorney for the United States offers a paper in cipher which he supposes to have proceeded from a person against whom he has preferred an indictment for high treason and another for misdemeanor, both of which are now before the grand jury, and produces a person said to be the secretary or clerk of the accused, who is supposed either to have copied this paper by his directions, or to be able to prove in some other manner that it has proceeded from his authority. To a question demanding whether he understands this paper, the witness has declined giving an answer, saying that the answer might criminate himself; and it is referred to the court to decide whether the excuse he has offered be sufficient to prevent his answering the question which has been propounded to him.

It is a settled maxim of law that no man is bound to criminate himself. This maxim forms one exception to the general rule which declares that every person is compellable to bear testimony in a court of justice. For the witness, who considers himself as being within this exception, it is alleged that he is, and from the nature of things must be, the sole judge of the effect of his answer: that he is, consequently, at liberty to refuse to answer any question, if he will say upon his oath that his answer to that question might criminate himself.

When this opinion was first suggested, the court conceived the principle laid down at the bar to be too broad, and, therefore, required that authorities in support of it might be adduced. Authorities have been adduced, and have been considered. In all of them the court could perceive that an answer to the question propounded might criminate the witness, and he was informed that he was at liberty to refuse an answer. These cases do not appear to the court to support the principle laid down by the counsel for the witness, in the full latitude in which they have stated it. There is no dictum which takes from the court the right to consider and decide whether any direct answer to the particular question propounded could be reasonably supposed to affect the witness. There may be questions, no direct answer to which could in any degree affect him, and there is no case which goes so far as to say that he is not bound to answer such question. The case of Goosly, in this court, is perhaps the strongest that has been adduced. But the general doctrine of the judge in that case must have referred to the circumstances which showed that the answer might criminate him.

When two principles come in conflict with each other, the court must give them both a reasonable construction, so as to preserve them both to a reasonable extent. The principle which en-

titles the United States to the testimony of every citizen, and the principles by which every witness is privileged not to accuse himself, can neither of them be entirely disregarded. They are believed both to be preserved to a reasonable extent, and according to the true intention of the rule, and of the exception to that rule, by observing that course which it is conceived courts have generally observed. It is this: When a question is propounded, it belongs to the court to consider and to decide whether any direct answer to it can implicate the witness. If this be decided in the negative, then he may answer it without violating the privilege which is secured to him by law. If a direct answer to it may criminate himself, then he must be the sole judge what his answer would be. The court cannot participate with him in this judgment, because they cannot decide on the effect of his answer, without knowing what it would be, and a disclosure of that fact to the judges would strip him of the privilege which the law allows, and which he claims. It follows, necessarily, then, from this state of things, that if the question be of such a description that an answer to it may or may not criminate the witness, according to the purport of that answer, it must rest with himself, who alone can tell what it would be, to answer the question or not. If, in such a case, he says upon his oath that his answer would criminate himself, the court can demand no other testimony of the fact. If the declaration be untrue, it is in conscience and in law as much a perjury as if he had declared any other untruth upon his oath; as it is one of those cases in which the rule of law must be abandoned, or the oath of the witness be received.

The counsel for the United States have also laid down this rule according to their understanding of it; but they appear to the court to have made it as much too narrow, as the counsel for the witness have made it too broad. According to their statement, a witness can never refuse to answer any question unless that answer, unconnected with any other testimony, would be sufficient to convict him of a crime. This would be rendering the rule almost perfectly worthless. Many links frequently compose that chain of testimony which is necessary to convict any individual of a crime. It appears to the court to be the true sense of the rule, that no witness is compellable to furnish any one of them against himself.

It is certainly not only a possible but a probable case, that a witness, by disclosing a single fact, may complete the testimony against himself, and to every effectual purpose accuse himself as entirely as he would do by stating every circumstance which would be required for his conviction. That fact of itself might be unavailing, but all other facts without it would be insufficient. While that remains concealed within his own bosom, he is safe; but draw it from thence, and he is exposed to a prosecution. The rule which declares that no man is compellable to accuse himself, would most obviously be infringed by compelling a witness to disclose a fact of this description.

What testimony may be possessed, or is attainable against any individual, the court can never know. It would seem, then, that the court ought never to compel a witness to give an answer which discloses a fact that would form a necessary and essential part of a crime which is punishable by the laws.

To apply this reasoning to the particular case under consideration. To know and conceal the treason of another is misprision of treason, and is punishable by law. No witness, therefore, is compellable by law to disclose a fact which would form a necessary and essential part of this crime. If the letter in question contain evidence of treason, which is a fact not dependent on the testimony of the witness before the court, and, therefore, may be proved without the aid of his testimony, and if the witness was acquainted with that treason when the letter was written, he may probably be guilty of misprision of treason, and, therefore, the court ought not to compel him to answer any question, the answer to which might disclose his former knowledge of the contents of that letter.

But if the letter should relate to the misdemeanor and not to the treason, the court is not apprized that a knowledge and concealment of the misdemeanor would expose the witness to any prosecution whatever. On this account the court was at first disposed to inquire whether the letter should be deciphered, in order to determine, from its contents, how far the witness could be examined respecting it. The court was inclined to this course, from considering the question as one which might require a disclosure of the knowledge which the witness might have had of the contents of this letter when it was put in cipher, or when it was copied by himself, if, indeed, such was the fact. But on hearing the question more particularly and precisely stated, and finding that it refers only to the present knowledge of the cipher, it appears to the court that the question may be answered without implicating the witness, because his present knowledge would not, it is believed, in a criminal prosecution, justify the inference that his knowledge was acquired previous to this trial, or afford the means of proving that fact.

The court is, therefore, of opinion that the witness may answer the question now propounded.

The gentlemen of the bar will understand the rule laid down by the court to be this:

It is the province of the court to judge whether any direct answer to the question which may be proposed will furnish evidence against the witness.

If such answer may disclose a fact, which forms a necessary and essential link in the chain of testimony, which would be sufficient to convict him of any crime, he is not bound to answer it so as to furnish matter for that conviction.

In such a case the witness must himself judge what his answer will be; and if he says on oath that he cannot answer without accusing himself, he cannot be compelled to answer.

Opinion on the motion for an attachment against Gen. Wilkinson, pronounced Saturday, June 27.

The Chief Justice delivered the following opinion on the motion for an attachment against General Wilkinson:

The motion now under consideration was heard at this time because it was alleged to be founded on a fact which might affect the justice of the case in which the court is about to be engaged, and because, while the bills were depending before the grand jury, the court might, without impeding the progress of the business, examine into the complaint which has been made.

The motion is to attach General Wilkinson for a contempt of this court, by obstructing the fair course of justice, with regard to a prosecution depending before it. In support of this charge has been offered the testimony of Mr. Knox, who states a conversation between General Wilkinson and himself, previous to his being served with a subpœna, the object of which was to extract from him whatever information he might possess, respecting the expedition which was the subject of inquiry in this court; and who states, also, that he was afterwards summoned before Judge Hall, who examined him upon interrogatories, and committed him to jail, whence he was taken by order of the deputy marshal, who was a military as well as civil officer, and put on board the Revenge, in which General Wilkinson sailed, for the purpose of being brought from New Orleans to Richmond.

That unfair practices towards a witness, who was to give testimony in this court, or oppression under color of its process, although those practices and that oppression were acted in another district, would be punishable in the mode now suggested, provided the person who had acted therein came within the jurisdiction of the court, is a position which the court is not disposed to controvert; but it is also believed that this mode of punishment ought not to be adopted unless the deviation from law could be clearly attached to the person against whom the motion was made; and unless the deviation was intentional, or unless the course of judicial proceeding was, or might be, so affected by it, as to make a punishment in this mode obviously conducive to a fair and correct administration of justice.

The conversation which took place between General Wilkinson and the witness, on the arrival of the latter in New Orleans, was manifestly held with the intention of drawing from him any information which he might possess, relative to the expedition which was then the subject of inquiry. In this intention, there was nothing unlawful. Government, and those who represent it, may justifiably and laudably use means to obtain voluntary communications, provided those means be not such as might tempt the person making them to give an improper coloring to his representations, which might afterwards adhere to them when repeated in court. The address stated to have been employed, the condescension and regard with which the witness was treated, are not said by himself to have been accompanied with any indications of a desire to draw from him more than the truth. The offer of money, if with a view to corrupt, could not be too severely reprehended. It is certainly a dangerous species of communication between those who are searching for testimony, and the person from whom it is expected. But in this case, the court cannot contemplate the offer as being made with immoral views. The witness had a right to demand from those he was expected to accuse a small sum of money, sufficient to subsist him on his return to his home. He was asked whether, on receiving this sum, his objections to giving testimony would be removed. This was certainly a delicate question, but it might be asked without improper motives, and it was pressed no further. This is not shown to be an attempt to contaminate the source of justice, and a consequent contempt of the court, in which it is administered.

The imprisonment of Mr. Knox, and the order for conveying him from New Orleans to Richmond, were the acts of Judge Hall. Whether his proceedings were legal or illegal, they are not shown to have been influenced by General Wilkinson, and this court cannot presume such to have been the fact. General Wilkinson, therefore, is not responsible for them. They were founded, it is true, on an affidavit made by him; but there was no impropriety in making this affidavit, and it remained with the judge to decide what the law would authorize in the case.

All the subsequent proceedings were directed by the civil authority. The agents who executed the orders of the judge were, indeed, military men, who, most probably, would not have disobeyed the Commander-in-chief; but that officer is not responsible in this way for having failed to interpose his authority, in order to prevent the execution of the orders of the judge, even if those orders ought not to have been given.

Upon a full view of the subject, the case appears to have been this. General Wilkinson was desirous that the testimony of the witness should be obtained; and, aware of the accusations which had before been brought against him for the use he had made of the military power, he was desirous of obtaining the testimony by lawful means, and, therefore, referred the subject to a judge of the Territory, under whose orders all subsequent proceedings were taken. Whether the judge did or did not transcend the limits prescribed by law, those ministerial officers who obeyed his orders cannot be supposed to have acted with a knowledge that he had mistaken his power. Should it be admitted that this would be no defence for them in an action to obtain compensation for the injury, yet it furnishes sufficient evidence that no contempt was intended to this court by General Wilkinson; that he had not been guilty of any intentional abuse of its process, or of any oppression in the manner of executing it.

It is said that Captain Gaines, the gentleman who the marshal appointed as his deputy for this particular purpose, had not taken the oath of office, and was, therefore, not legally qualified to act in that character. However correct this ob-

servation may be in itself, it does not appear to the court to justify an attachment against General Wilkinson. The person who sees in the possession of another, a commission as deputy marshal, and sees that others act under the commission, ought not to be subjected to a process of contempt for having made no inquiries respecting the oath which the law requires to be taken.

The attachment will not be awarded, because General Wilkinson cannot be considered as having controlled or influenced the conduct of the civil magistrate, and because in this transaction his intention appears to have been not to violate the laws. In such a case, where an attachment does not seem to be absolutely required by the justice due to the particular individual against whom the prosecution is depending, the court is more inclined to leave the parties to the ordinary course of law, than to employ the extraordinary powers which are given for the purpose of preserving the administration of justice in that purity which ought to be so universally desired.

Opinion on the question concerning the order in which the evidence to the jury, on the trial of Aaron Burr for treason, was to be introduced; pronounced on Tuesday, August 18, 1807.

Although this is precisely the same question relative to the order of evidence which was decided by this court on the motion to commit, yet it is now presented under somewhat different circumstances, and may, therefore, not be considered as determined by the former decision. At that time no indictment was found, no pleadings existed, and there was no standard by which the court could determine the relevancy of the testimony offered, until the fact to which it was to apply should be disclosed. There is now an indictment specifying the charge which is to be proved on the part of the prosecution; there is an issue made up, which presents a point to which all the testimony must apply, and, consequently, it is in the power of the court to determine, with some accuracy, on the relevancy of the testimony which may be offered.

It is contended in support of the motion which has been made, that, according to the regular order of evidence, and the usage of courts, the existence of the fact on which the charge depends, ought to be shown, before any testimony explanatory or confirmatory of that fact can be received. Against the motion, it is contended that the crime alleged in the indictment consists of two parts—the fact and the intention; and that it is in the discretion of the attorney for the United States, first to adduce the one or the other; that no instance has ever occurred of the interference of a court with that arrangement which he has thought proper to make.

As it is not unfrequent, the argument on both sides appears to be in many respects correct. It is the most usual, and appears to be the natural order of testimony to show, first the existence of the fact respecting which the inquiry is to be made. It is unquestionably attended with this advantage; there is a fixed and certain object to which the mind applies with precision all the testimony which may be received, and the court can decide with less difficulty on the relevancy of all the testimony which may be offered. But this arrangement is not clearly shown to be established by any fixed rule of evidence, and no case has been adduced in which it has been forced by the court on the counsel for the prosecution.

On one side, it has been contended that, by requiring the exhibition of the fact in the first instance, a great deal of time may be saved, since there may be a total failure of proof with respect to the fact; and this argument has been answered by observing, that, should there even be such failure, they could not interpose and arrest the progress of the cause; but must permit the counsel for the prosecution to proceed with that testimony which is now offered.

Levying of war is a fact which must be decided by the jury. The court may give general instructions on this as on every other question brought before them, but the jury must decide upon it as compounded of fact and law. Two assemblages of men, not unlike in appearance, possibly may be the one treasonable and the other innocent. If, therefore, the fact exhibited to the court and jury should, in the opinion of the court, not amount to the act of levying war, the court could not stop the prosecution, but must permit the counsel for the United States to proceed to show the intention of the act, in order to enable the jury to decide upon the fact coupled with the intention.

The consumption of time would probably be nearly the same, whether the counsel for the prosecution commenced with the fact or the intention, provided those discussions which respect the admissibility of evidence would be as much avoided in the one mode as in the other. The principal importance which, viewing the question in this light, would seem to attach to its decision, is the different impressions which the fact itself might make, if exhibited at the commencement or close of the prosecution.

Although human laws punish actions, the human mind spontaneously attaches guilt to intentions. The same fact, therefore, may be viewed very differently, where the mind is prepared, by a course of testimony, caculated to impress it with a conviction of the criminal designs of the accused, and where the fact is stated without such preparation. The overt act may be such as to influence the opinion, on the testimony afterwards given, respecting the intention; and the testimony respecting the intention may be such as to influence the opinion on the testimony which may be afterwards given respecting the overt act.

On the question of consuming time, the argument was placed in one point of view, by the counsel for the defence, which excited some doubt. The case was supposed of only one witness to the overt act, and a declaration that it could be proved by no other. The court was asked whether the counsel would be permitted then to proceed to examine the intentions of the accused, and to do worse than waste the time of the court and jury

by exposing, without a possible object, the private views and intentions of any person whatever. Perhaps, in such a case, the cause might be arrested, but this does not appear to warrant the inference that it might be arrested, because the fact proved by the two witnesses did not appear to the court to amount to the act of levying war. In the case supposed, the declaration of the law is positive, and a point proper to be referred to the court occurs, which suspends the right of the jury to consider the subject, and compels them to bring in a verdict of not guilty. In such a case no testimony could be relevant, and all testimony ought to be excluded. Suppose the counsel for the prosecution should say that he had no testimony to prove the treasonable intention; that he believed confidently the object of the assemblage of men on Blannerhasset's island to be innocent; that it did not amount to the crime of levying war—surely it would be a wanton and useless waste of time to proceed with the examination of the overt act. When such a case occurs, it cannot be doubted that a *nolle prosequi* will be entered, or the jury be directed, with the consent of the attorney, to find a verdict of not guilty.

It has been truly stated that the crime alleged in the indictment consists of the fact, and of the intention with which that fact was committed. The testimony disclosing both the fact and the intention must be relevant. The court finds no express rule stating the order in which the attorney is to adduce relevant testimony, nor any case in which a court has interfered with the arrangement he has made. No alteration of that arrangement, therefore, will now be directed.

But it is proper to add that the intention, which is considered as relevant in this stage of the inquiry, is the intention which composes a part of the crime; the intention with which the overt act itself was committed; not a general evil disposition, or an intention to commit a distinct fact. This species of testimony, if admissible at all, is received as corroborative or confirmatory testimony. It does not itself prove the intention with which the act was performed, but it renders other testimony probable which goes to that intention. It is explanatory of, or assistant to that other testimony. Now it is essentially repugnant to the usages of courts, to the declarations of the books by whose authority such testimony is received, that corroborative or confirmatory testimony should precede that which it is to corroborate or confirm. Until the introductory testimony be given, that which is merely corroborative is not relevant, and, of consequence, if objected to, cannot be admitted without violating the best settled rules of evidence.

This position may be illustrated by a direct application to the testimony of General Eaton. So far as his testimony relates to the fact charged in the indictment, so far as relates to levying war on Blannerhasset's island, so far as relates to a design to seize on New Orleans, or to separate by force the Western from the Atlantic States, it is deemed relevant, and is now admissible. So far as it respects other plans, to be executed in the City of Washington or elsewhere, if it indicates a treasonable design, it is a design to commit a distinct act of treason, and is, therefore, not relevant to the present indictment. It can only, by showing a general evil intention, render it more probable that the intention in the particular case was evil; it is merely additional or corroborative testimony, and therefore, if admissible at any time, is only admissible according to rules and principles which the court must respect, after hearing that which it is to confirm.

The counsel will perceive how many questions respecting the relevancy of testimony, the arrangement proposed on the part of the prosecution will most probably produce. He is, however, at liberty to proceed according to his own judgment, and the court feels itself bound to exclude such testimony only, as, at the time of its being offered, does not appear to be relevant.

Opinion on the motion to stop the introduction of evidence in the trial of Aaron Burr for treason; pronounced Monday, August 31.

The question now to be decided has been argued in a manner worthy of its importance, and with an earnestness evincing the strong conviction felt by the counsel on each side that the law is with them.

A degree of eloquence, seldom displayed on any occasion, has embellished a solidity of argument and a depth of research, by which the court has been greatly aided in forming the opinion it is about to deliver.

The testimony adduced on the part of the United States, to prove the overt act laid in the indictment having shown, and the attorney for the United States having admitted, that the prisoner was not present when the act, whatever may be its character, was committed, and there being no reason to doubt but that he was at a great distance and in a different State, it is objected to the testimony offered on the part of the United States to connect him with those who committed the overt act, that such testimony is totally irrelevant, and must, therefore, be rejected.

The arguments in support of this motion respect, in part, the merits of the case, as it may be supposed to stand, independent of the pleadings, and, in part, as exhibited by the pleadings.

On the first division of the subject, two points are made:

1st. That, conformably to the Constitution of the United States, no man can be convicted of treason who was not present when the war was levied.

2d. That, if this construction be erroneous, no testimony can be received to charge one man with the overt acts of others, until those overt acts, as laid in the indictment, be proved to the satisfaction of the court.

The question which arises on the construction of the Constitution, in every point of view in which it can be contemplated, is of infinite moment to the people of this country, and to their Government, and requires the most temperate and the most deliberate consideration.

"Treason against the United States shall consist only in levying war against them."

What is the natural import of the words "levying of war?" and who may be said to "levy" it? Had their first application to treason been made by our Constitution, they would certainly have admitted of some latitude of construction. Taken most literally, they are, perhaps, of the same import with the words *raising* or *creating* war; but as those who join after the commencement are equally the objects of punishment, there would, probably, be a general admission that the term comprehended making war, or carrying on war. In the construction which the courts would be required to give these words, it is not improbable that those who should raise, create, make, or carry on war, might be comprehended. The various acts which would be considered as coming within the term, would be settled by a course of decisions; and it would be affirming boldly to say, that those only who actually constituted a portion of the military force appearing in arms could be considered as levying war. There is no difficulty in affirming that there must be a war, or the crime of levying it cannot exist; but there would often be considerable difficulty in affirming that a particular act did, or did not, involve the person committing it in the guilt, and in the fact of levying war. If, for example, an army should be actually raised, for the avowed purpose of carrying on open war against the United States, and subverting their Government, the point must be weighed very deliberately before a judge would venture to decide that an overt act of levying war had not been committed by a commissary of purchases, who never saw the army, but who, knowing its object, and leaguing himself with the rebels, supplied that army with provisions; or, by a recruiting officer, holding a commission in the rebel service, who, though never in camp, executed the particular duty assigned to him.

But, the term is not, for the first time, applied to treason by the Constitution of the United States. It is a technical term. It is used in a very old statute of that country whose language is our language, and whose laws form the substratum of our laws. It is scarcely conceivable that the term was not employed by the framers of our Constitution in the sense which had been affixed to it by those from whom we borrowed it. So far as the meaning of any terms, particularly terms of art, is completely ascertained, those by whom they are employed must be considered as employing them in that ascertained meaning, unless the contrary be proved by the context. It is, therefore, reasonable to suppose, unless it be incompatible with other expressions of the Constitution, that the term "levying war," is used in that instrument in the same sense in which it was understood in England and in this country to have been used in the statute of the 25th Edward III., from which it was borrowed.

It is said that this meaning is to be collected only from adjudged cases. But this position cannot be conceded to the extent in which it is laid down. The superior authority of adjudged cases will never be controverted. But those celebrated elementary writers, who have stated the principles of the law, whose statements have received the common approbation of legal men, are not to be disregarded. Principles laid down by such writers as Coke, Hale, Foster, and Blackstone, are not lightly to be rejected. These books are in the hands of every student. Legal opinions are formed upon them, and those opinions are afterwards carried to the bar, the bench and the Legislature. In the exposition of terms, therefore, used in instruments of the present day, the definitions and the *dicta* of those authors, if not contradicted by adjudications, and if compatible with the words of the statute, are entitled to respect. It is to be regretted that they do not shed as much light on this part of the subject as is to be wished.

Coke does not give a complete definition of the term, but puts cases which amount to levying war. "An actual rebellion or insurrection," he says, "is a levying of war." In whom? Coke does not say whether in those only who appear in arms, or in all those who take part in the rebellion or insurrection by real open deed.

Hale, in treating on the same subject, puts many cases which shall constitute a levying of war, without which no act can amount to treason, but he does not particularize the parts to be performed by the different persons concerned in that war, which shall be sufficient to fix on each the guilt of levying it.

Foster says, "the joining with rebels in an act of rebellion, or with enemies in acts of hostility, will make a man a traitor." "Furnishing rebels or enemies with money, arms, ammunition, or other necessaries, will *prima facie*, make a man a traitor."

Foster does not say that he would be a traitor under the words of the statute, independent of the legal rule which attaches the guilt of the principal to an accessary, nor that his treason is occasioned by that rule. In England this discrimination need not be made, except for the purpose of framing the indictment; and, therefore, in the English books we do not perceive any effort to make it. Thus, surrendering a castle to rebels, being in confederacy with them, is said by Hale and Foster to be treason under the clause of levying war; but whether it be levying war in fact, or aiding those who levy it, is not said. Upon this point Blackstone is not more satisfactory. Although we may find among the commentators upon treason, enough to satisfy the inquiry, What is a state of internal war? yet, no precise information can be acquired from them which would enable us to decide with clearness, whether persons not in arms, but taking part in a rebellion, could be said to levy war, independent of that doctrine which attaches to the accessary the guilt of his principal.

If, in adjudged cases, this question has been taken up and directly decided, the court has not seen those cases. The arguments which may be drawn from the form of the indictment, though strong, is not conclusive. In the precedent found

in Fremaine, Mary Speake, who was indicted for furnishing provisions to the party of the Duke of Monmouth, is indicted for furnishing provisions to those who were levying war, not for levying war herself. It may correctly be argued that, had this act amounted to levying war, she would have been indicted for levying war, and the furnishing of provisions would have been laid as the overt act. The court felt this when the precedent was produced. But the argument, though strong, is not conclusive; because, in England, the inquiry, whether she had become a traitor by levying war, or by giving aid and comfort to those who were levying war, was unimportant; and because, too, it does not appear, from the indictment, that she was actually concerned in the rebellion; that she belonged to the rebel party; or was guilty of anything further than a criminal speculation, in selling them provisions.

It is not deemed necessary to trace the doctrine that, in treason, all are principals, to its source. Its origin is, most probably, stated correctly by Judge Tucker, in a work, the merit of which is with pleasure acknowledged. But if a spurious doctrine has been introduced into the common law, and has, for centuries, been admitted as genuine, it would require great hardihood in a judge to reject it. Accordingly, we find those of the English jurists, who seem to disapprove the principle, declaring that it is now too firmly settled to be shaken.

It is unnecessary to trace this doctrine to its source, for another reason. The terms of the Constitution comprise no question respecting principal and accessary, so far as either may be truly and in fact said to levy war. Whether in England a person would be indicted in express terms for levying war, or for assisting others in levying war; yet, if in correct and legal language, he can be said to have levied war; and if it has never been decided that the act would not amount to levying war, his case may, without violent construction, be brought within the letter and the plain meaning of the Constitution.

In examining these words, the argument which may be drawn from felonies, as for example, from murder, is not more conclusive. Murder is the single act of killing with malice aforethought. But war is a complex operation, composed of many parts, co-operating with each other. No one man, or body of men, can perform them all, if the war be of any continuance. Although, then, in correct and in law language, he alone is said to have murdered another who has perpetrated the fact of killing, or has been present aiding that fact, it does not follow that he alone can have levied war who has borne arms. All those who perform the various and essential military parts of prosecuting the war, which must be assigned to different persons, may, with correctness and accuracy, be said to levy war.

Taking this view of the subject, it appears to the court, that those who perform a part in the prosecution of the war may correctly be said to levy war and to commit treason under the Constitution. It will be observed, that this opinion does not extend to the case of a person who performs no act in the prosecution of the war, who counsels and advises it, or who, being engaged in the conspiracy, fails to perform his part. Whether such persons may be implicated by the doctrine, that, whatever would make a man an accessary in felony, makes him a principal in treason; or are excluded, because that doctrine is inapplicable to the United States, the Constitution having declared that treason shall consist only in levying war, and having made the proof of *overt acts* necessary to conviction, is a question of vast importance, which it would be proper for the Supreme Court to take a fit occasion to decide, but which an inferior tribunal would not willingly determine, unless the case before them should require it.

It may now be proper to notice the opinion of the Supreme Court, in the case of the United States against Bollman and Swartwout. It is said that this opinion, in declaring that those who do not bear arms may yet be guilty of treason, is contrary to law, and is not obligatory, because it is extra-judicial, and was delivered on a point not argued. This court is, therefore, required to depart from the principle there laid down.

It is true that, in that case, after forming the opinion that no treason could be committed, because no treasonable assemblage had taken place, the court might have dispensed with proceeding further in the doctrines of treason. But it is to be remembered, that the judges might act separately, and, perhaps, at the same time, on the various prosecutions which might be instituted, and that no appeal lay from their decisions. Opposite judgments on the point would have presented a state of things infinitely to be deplored by all. It was not surprising, then, that they should have made some attempt to settle principles which would probably occur, and which were in some degree connected with the point before them.

The court had employed some reasoning to show that, without the actual imbodying of men, war could not be levied. It might have been inferred from this, that those only who were so imbodied could be guilty of treason. Not only to exclude this inference, but also to affirm the contrary, the court proceeded to observe: "It is not the intention of the court to say that no individual can be guilty of this crime who has not appeared in arms against his country. On the contrary, if war be actually levied, that is, if a body of men be actually assembled for the purpose of effecting, by force, a treasonable object, all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors."

This court is told that, if this opinion be incorrect, it ought not to be obeyed, because it was extra-judicial. For myself, I can say that I could not lightly be prevailed on to disobey it, were I even convinced that it was erroneous; but I would certainly use any means which the law placed in my power to carry the question again before the

Supreme Court for reconsideration, in a case in which it would directly occur, and be fully argued.

The court which gave this opinion was composed of four judges. At the time I thought them unanimous, but I have since had reason to suspect that one of them, whose opinion is entitled to great respect, and whose indisposition prevented his entering into the discussions on some of those points which were not essential to the decision of the very case under consideration, did not concur in this particular point with his brethren. Had the opinion been unanimous, it would have been given by a majority of the judges. But should the three who were absent concur with that judge who was present, and who perhaps dissents from what was then the opinion of the court, a majority of the judges may overrule this decision. I should, therefore, feel no objection, although I then thought, and still think, the opinion perfectly correct, to carry the point, if possible, again before the Supreme Court, if the case should depend upon it.

In saying that I still think the opinion perfectly correct, I do not consider myself as going further than the preceding reasoning goes. Some gentlemen have argued as if the Supreme Court had adopted the whole doctrine of the English books on the subject of accessaries to treason. But certainly such is not the fact. Those only who perform a part, and who are leagued in the conspiracy, are declared to be traitors. To complete the definition, both circumstances must concur. They must "perform a part," which will furnish the overt act, and they must be "leagued in the conspiracy." The person who comes within this description, in the opinion of the court, levies war. The present motion, however, does not rest upon this point; for, if under this indictment the United States might be let in to prove the part performed by the prisoner, if he did perform any act, the court could not stop the testimony in its present stage.

2. The second point involves the character of the overt act which has been given in evidence, and calls upon the court to declare whether that act can amount to levying war. Although the court ought now to avoid any analysis of the testimony which has been offered in this case, provided the decision of the motion should not rest upon it, yet many reasons concur in giving peculiar propriety to a delivery, in the course of these trials, of a detailed opinion on the question, What is levying war? As this question has been argued at great length, it may probably save much trouble to the counsel now to give that opinion.

In opening the case it was contended by the attorney for the United States, and has since been maintained on the part of the prosecution, that neither arms nor the application of force or violence are indispensably necessary to constitute the fact of levying war. To illustrate these positions several cases have been stated, many of which would clearly amount to treason. In all of them, except that which was probably intended to be this case, and on which no observation will be made, the object of the assemblage was clearly treasonable. Its character was unequivocal, and was demonstrated by evidence furnished by the assemblage itself. There was no necessity to rely upon information drawn from extrinsic sources, or, in order to understand the fact, to pursue a course of intricate reasoning, and to conjecture motives. A force is supposed to be collected for an avowed treasonable object, in a condition to attempt that object, and to have commenced the attempt by moving towards it. I state these particulars because, although the cases put may establish the doctrine they are intended to support, may prove that the absence of arms, or the failure to apply force to sensible objects, by the actual commission of violence on those objects, may be supplied by other circumstances; yet they also serve to show that the mind requires those circumstances to be satisfied that war is levied.

The construction of the opinion of the Supreme Court is, I think, thus far correct. It is certainly the opinion which was at the time entertained by myself, and which is still entertained. If a rebel army, avowing its hostility to the sovereign power, should front that of the Government—should march and countermarch before it—should manœuvre in its face, and should then disperse from any cause whatever without firing a gun—I confess I could not, without some surprise, hear gentlemen seriously contend that this could not amount to an act of levying war. A case equally strong may be put with respect to the absence of military weapons. If the party be in a condition to execute the purposed treason without the usual implements of war, I can perceive no reason for requiring those implements in order to constitute the crime.

It is argued that no adjudged case can be produced from the English books where actual violence has not been committed. Suppose this were true. No adjudged case has, or, it is believed, can be produced from those books in which it has been laid down that war cannot be levied without the actual application of violence to external objects. The silence of the reporters on this point may be readily accounted for. In cases of actual rebellion against the Government, the most active and influential leaders are generally most actively engaged in the war; and as the object can never be to extend punishment to extermination, a sufficient number are found among those who have committed actual hostilities to satisfy the avenging arm of justice. In cases of constructive treason—such as pulling down meeting-houses—where the direct and avowed object is not the destruction of the sovereign power, some act of violence might be generally required to give the crime a sufficient degree of malignity to convert it into treason, to render the guilt of any individual unequivocal.

But Vaughan's case is a case where there was no real application of violence, and where the act was adjudged to be treason. Gentlemen argue that Vaughan was only guilty of adhering to the King's enemies, but they have not the authority of the court for so saying. The judges unquestionably treat the cruising of Vaughan as an overt act of levying war.

The opinions of the best elementary writers concur in declaring, that, where a body of men are assembled for the purpose of making war against the Government, and are in a condition to make that war, the assemblage is an act of levying war. These opinions are contradicted by no adjudged case, and are supported by Vaughan's case. This court is not inclined to controvert them.

But although, in this respect, the opinion of the Supreme Court has not been misunderstood on the part of the prosecution, that opinion seems not to have been fully adverted to in a very essential point, in which it is said to have been misconceived by others.

The opinion, I am informed, has been construed to mean that any assemblage whatever for a treasonable purpose, whether in force or not in force, whether in a condition to use violence or not in that condition, is a levying of war. It is this construction which has not indeed been expressly advanced at the bar, but which is said to have been adopted elsewhere, that the court deems it necessary to examine.

Independent of authority—trusting only to the dictates of reason—and expounding terms according to their ordinary signification—we should probably all concur in the declaration that war could not be levied without the employment and exhibition of force. War is an appeal from reason to the sword, and he who makes the appeal evidences the fact by the use of the means. His intention to go to war may be proved by words, but the actual going to war is a fact which is to be proved by open deed. The end is to be effected by force, and it would seem that in cases where no declaration is to be made, the state of actual war could only be created by the employment of force, or being in a condition to employ it.

But the term having been adopted by our Constitution, must be understood in that sense in which it was universally received in this country when the Constitution was framed. The sense in which it was received is to be collected from the most approved authorities of that nation from which we have borrowed the term.

Lord Coke says, that levying war against the King was treason at the common law. "A compassing or conspiracy to levy war," he adds, "is no treason; for there must be a levying of war in fact." He proceeds to state cases of constructive levying war, where the direct design is not to overturn the Government, but to effect some general object by force. The terms he employs in stating these cases are such as indicate an impression on his mind that actual violence is a necessary ingredient in constituting the fact of levying war. He then proceeds to say, "An actual rebellion or insurrection is a levying of war within this act." "If any with strength and weapons invasive and defensive doth hold and defend a castle or fort against the King and his power, this is levying of war against the King." These cases are put to illustrate what he denominates "a war in fact." It is not easy to conceive "an actual invasion or insurrection" unconnected with force, nor can "a castle or fort be defended with strength and weapons invasive and defensive" without the employment of actual force. It would seem, then, to have been the opinion of Lord Coke, that to levy war there must be an assemblage of men in a condition, and with an intention, to employ force. He certainly puts no case of a different description.

Lord Hale says, (149. 6,) "what shall be said to be a levying of war is partly a question of fact; for it is not every unlawful or riotous assembly of many persons to do an unlawful act, though *de facto* they commit the act they intend, that makes a levying of war; for then every riot would be treason, &c., but it must be such an assembly as carries with it *speciem belli*, the appearance of war, as if they ride or march *vexillis explicatis*, with colors flying, or if they be formed into companies or furnished with military officers, or if they are armed with military weapons, as swords, guns, bills, halberds, pikes, and are so circumstanced that it may be reasonably concluded they are in a posture of war, which circumstances are so various that it is hard to describe them all particularly."

"Only the general expressions in all the indictments of this nature that I have seen are *more guerrine arraiati*, arrayed in warlike manner."

He afterwards adds, "If there be a war levied as is above declared, viz: an assembly arrayed in warlike manner, and so in the posture of war for any treasonable attempt, it is *bellum livatum*, but not *percussum*."

It is obvious that Lord Hale supposed an assemblage of men in force, in a military posture, to be necessary to constitute the fact of levying war. The idea he appears to suggest, that the apparatus of war is necessary, has been very justly combated by an able judge who has written a valuable treatise on the subject of treason; but it is not recollected that his position, that the assembly should be in a posture of war for any treasonable attempt, has ever been denied. Hawk. ch. 17, sec. 23, says, "That not only those who rebel against the King, and take up arms to dethrone him, but also, in many other cases, those who, in a violent and forcible manner, withstand his lawful authority, are said to levy war against him; and therefore those that hold a fort or castle against the King's forces, or keep together armed numbers of men against the King's express command, have been adjudged to levy war against him."

The cases put by Hawkins are all cases of actual force and violence. "Those who rebel against the King, and take up arms to dethrone him." In many other cases those "who, in a violent and forcible manner, withstand his lawful authority." "Those that hold a fort or castle against his forces, or keep together armed numbers of men against his express command."

These cases are obviously cases of force and violence.

Hawkins next proceeds to describe cases in which war is understood to be levied under the statute, although it was not directly made against the Government. This Lord Hale terms an *in-*

terpretatio, or constructive levying of war, and it will be perceived that he puts no case in which actual force is dispensed with.

"Those also, he says, who make an insurrection in order to redress a public grievance, whether it be a real or pretended one, and, of their own authority, attempt with force to redress it, are said to levy war against the King, although they have no direct design against his person, inasmuch as they insolently invade his prerogative, by attempting to do that by private authority which he by public justice ought to do, which manifestly tends to a downright rebellion; as where great numbers *by force* attempt to remove certain persons from the King," &c. The cases here put by Hawkins of a constructive levying of war do, in terms, require force as a constituent part of the description of the offence.

Judge Foster, in his valuable treatise on treason, states the opinion which he has quoted from Lord Hale, and differs from that written so far as the latter might seem to require swords, drums, colors, &c., what he terms the pomp and pageantry of war, as essential circumstances to constitute the fact of levying war. In the cases of Damaree and Purchase, he says, "the want of those circumstances weighed nothing with the court, although the prisoners' counsel insisted much on that matter." But, he adds, "the number of the insurgents supplied the want of military weapons, and they were provided with axes, crows, and other tools of the like nature proper for the mischief they intended to effect. *Furor arma ministrat.*"

It is apparent that Judge Foster here alludes to an assemblage in force, or, as Lord Hale terms it, "in a warlike posture;" that is, in a condition to attempt or proceed upon the treason which had been contemplated. The same author afterwards states at large the cases of Damaree and Purchase, from 8th State Trials, and they are cases where the insurgents not only assembled in force, in the posture of war, or in a condition to execute the treasonable design, but they did actually carry it into execution, and did resist the guards who were sent to disperse them.

Judge Foster states, section 4, all insurrections to effect certain innovations of a public and general concern, by an armed force, to be, in construction of law, high treason within the clause of levying war.

The cases put by Foster of constructive levying of war, all contain, as a material ingredient, the actual employment of force. After going through this branch of the subject, he proceeds to state the law in the case of an actual levying of war, that is, where the war is intended directly against the Government.

He says, section 9, "An assembly armed and arrayed in a warlike manner, for a treasonable purpose, is *bellum livatum* though not *bellum percussum*. Listing and marching are sufficient overt acts without coming to a battle or action. So, cruising on the King's subjects under a French commission, France being then at war with us, was held to be adhering to the King's enemies, though no other act of hostility be proved."

"An assembly armed and arrayed in a warlike manner for any treasonable purpose" is certainly in a state of force; in a condition to execute the treason for which they assembled. The words "enlisting and marching," which are overt acts of levying war, do, in the arrangement of the sentence, also imply a state of force, though that state is not expressed in terms; for the succeeding words, which state a particular event as not having happened, prove that event to have been the next circumstance to those which had happened; they are "without coming to a battle or action." "If men be enlisted and march," that is, if they march prepared for battle or in a condition for action, (for marching is a technical term applied to the movement of a military corps,) it is an overt act of levying war, though they do not come to a battle or action. This exposition is rendered the stronger by what seems to be put in the same sentence as a parallel case with respect to adhering to an enemy. It is cruising under a commission from an enemy without committing any other act of hostility. Cruising is the act of sailing in warlike form and in a condition to assail those of whom the cruiser is in quest.

This exposition, which seems to be that intended by Judge Foster, is rendered the more certain by a reference to the case in the State Trials from which the extracts are taken. The words used by the Chief Justice are, "when men form themselves into a body, and march, rank and file, with weapons offensive and defensive, this is levying of war with open force, if the design be public." Mr. Phipps, the counsel for the prisoner, afterwards observed, "intending to levy war is not treason unless a war be actually levied." To this the Chief Justice answered, "Is it not actually levying of war, if they actually provide arms and levy men, and, in a warlike manner, set out and cruise, and come with a design to destroy our ships?" Mr. Phipps still insisted "it would not be an actual levying of war unless they committed some act of hostility. "Yes, indeed," said the Chief Justice, "the going on board and being in a posture to attack the King's ships." Mr. Baron Powis added, "but for you to say that, because they did not actually fight, it is not a levying of war, is it not plain what they did intend? That they came with that intention, that they came in that posture, that they came armed, and had guns and blunderbusses, and surrounded the ship twice; they came with an armed force, that is a strong evidence of the design."

The point insisted on by counsel in the case of Vaughan, as in this case, was, that war could not be levied without actually fighting. In this case the counsel was very properly overruled; but it is apparent that the judges proceeded entirely on the idea that a warlike posture was indispensable to the fact of levying war.

Judge Foster proceeds to give other instances of levying war:—"Attacking the King's forces in opposition to his authority, upon a march or in

quarters, is levying war." "Holding a castle or fort against the King or his forces, if actual force be used in order to keep possession, is levying war. But a bare detainer, as suppose by shutting the gates against the King or his forces, without any other force from within, Lord Hale conceiveth, will not amount to treason."

The whole doctrine of Judge Foster, on this subject, seems to demonstrate a clear opinion that a state of force and violence, a posture of war, must exist to constitute, technically as well as really, the fact of levying war.

Judge Blackstone seems to concur with his predecessors. Speaking of levying war, he says: "This may be done by taking arms not only to dethrone the King, but under pretence to reform religion or the laws, or to remove evil counsellors, or other grievances, whether real or pretended; for the law does not, neither can it, permit any private man, or set of men, to interfere forcibly in matters of such high importance."

He proceeds to give examples of levying war, which show that he contemplated actual force as a necessary ingredient in the composition of this crime. It would seem, then, from the English authorities, that the words "levying war" have not received a technical different from their natural meaning, so far as respects the character of the assemblage of men which may constitute the fact. It must be a warlike assemblage, carrying the appearance of force, and in a situation to practise hostility.

Several judges of the United States have given opinions at their circuits on this subject, all of which deserve and will receive the particular attention of this court.

In his charge to the grand jury, when John Fries was indicted, in consequence of a forcible opposition to the direct tax, Judge Iredell is understood to have said, "I think I am warranted in saying, that if, in the case of the insurgents who may come under your consideration, the intention was to prevent, by force of arms, the execution of any act of the Congress of the United States altogether, any forcible opposition, calculated to carry that intention into effect, was a levying war against the United States, and, of course, an act of treason." To levy war, then, according to this opinion of Judge Iredell, required the actual exertion of force.

Judge Patterson, in his opinions delivered in two different cases, seems not to differ from Judge Iredell. He does not, indeed, precisely state the employment of force as necessary to constitute a levying of war, but in giving his opinion in cases in which force was actually employed, he considers the crime in one case as dependent on the intention; and in the other case he says, "combining these facts and this design," (that is, combining actual force with a treasonable design,) "the crime is high treason."

Judge Peters has also indicated the opinion that force was necessary to constitute the crime of levying war.

Judge Chase has been particularly clear and explicit. In an opinion, which he appears to have prepared on great consideration, he says: "The court are of opinion, that if a body of people conspire and meditate an insurrection to resist or oppose the execution of a statute of the United States by force, that they are only guilty of a high misdemeanor; but if they proceed to carry such intention into execution by force, that they are guilty of the treason of levying war; and the quantum of the force employed neither increases nor diminishes the crime; whether by one hundred, or one thousand persons, is wholly immaterial. The court are of opinion, that a combination, or conspiracy, to levy war against the United States, is not treason, unless, combined with an attempt to carry such combination or conspiracy into execution, some actual force or violence must be used in pursuance of such design to levy war; but that it is altogether immaterial whether the force used be sufficient to effectuate the object. Any force connected with the intention will constitute the crime of levying war."

In various parts of the opinion delivered by Judge Chase in the case of Fries, the same sentiments are to be found. It is to be observed that these judges are not content that troops should be assembled in a condition to employ force. According to them some degree of force must have been actually employed.

The judges of the United States, then, so far as their opinions have been quoted, seem to have required still more to constitute the fact of levying war than has been required by the English books. Our judges seem to have required the actual exercise of force, the actual employment of some degree of violence. This, however, may be, and probably is, because in the cases in which their opinions were given, the design not having been to overturn the Government, but to resist the execution of a law, such an assemblage would be sufficient for the purpose as to require the actual employment of force to render the object unequivocal.

But it is said all these authorities have been overruled by the decision of the Supreme Court in the case of the United States against Swartwout and Bollman. If the Supreme Court have, indeed, extended the doctrine of treason further than it has heretofore been carried by the judges of England or of this country, their decision would be submitted to. At least this court could go no further than to endeavor again to bring the point directly before them. It would, however, be expected that an opinion which is to overrule all former precedents, and to establish a principle never before recognised, should be expressed in plain and explicit terms. A mere implication ought not to prostrate a principle which seems to have been so well established. Had the intention been entertained to make so material a change in this respect, the court ought to have expressly declared, that any assemblage of men whatever, who had formed a treasonable design, whether in force or not, whether in a condition to attempt the design or not, whether attended with warlike appearances or not, constitutes the fact of levying war. Yet no declaration to this amount is made.

Not an expression of the kind is to be found in the opinion of the Supreme Court. The foundation on which this argument rests is the omission of the court to state that the assemblage, which constitutes the fact of levying war, ought to be in force, and some passages which show that the question respecting the nature of the assemblage was not in the mind of the court when the opinion was drawn, which passages are mingled with others, which at least show that there was no intention to depart from the course of the precedents in cases of treason by levying war.

Every opinion, to be correctly understood, ought to be considered with a view to the case in which it was delivered. In the case of the United States against Bollman and Swartwout, there was no evidence that even two men had ever met for the purpose of executing the plan in which those persons were charged with having participated. It was, therefore, sufficient for the court to say, that, unless men were assembled, war could not be levied. That case was decided by this declaration. The court might, indeed, have defined the species of assemblage which would amount to levying of war, but, as this opinion was not a treatise on treason, but a decision of a particular case, expressions of doubtful import should be construed in reference to the case itself; and the mere omission to state that a particular circumstance was necessary to the consummation of the crime, ought not to be construed into a declaration that the circumstance was unimportant. General expressions ought not to be considered as overruling settled principles, without a direct declaration to that effect. After these preliminary observations the court will proceed to examine the opinion which has occasioned them.

The first expression in it, bearing on the present question is, "to constitute that specific crime for which the prisoner, now before the court, has been committed, war must be actually levied against the United States. However flagitious may be the crime of conspiracy to subvert, by force, the Government of our country, such conspiracy is not treason. To conspire to levy war, and actually to levy war, are distinct offences. The first must be brought into operation by the assemblage of men for a purpose treasonable in itself, or the fact of levying war cannot have been committed."

Although it is not expressly stated that the assemblage of men for the purpose of carrying into operation the treasonable intent, which will amount to levying war, must be an assemblage in force, yet it is fairly to be inferred from the context; and nothing like dispensing with force appears in this paragraph. The expressions are, "to constitute the crime, war must be actually levied." A conspiracy to levy war is spoken of as "a conspiracy to subvert, by force, the Government of our country." Speaking in general terms of an assemblage of men for this or for any other purpose, a person would naturally be understood as speaking of an assemblage in some degree adapted to the purpose. An assemblage to subvert, by force, the Government of our country, and amounting to a levying of war, should be an assemblage in force. In a subsequent paragraph the court says, "it is not the intention of the court to say, that no individual can be guilty of this crime who has not appeared in arms against his country. On the contrary, if war be actually levied, that is, if a body of men be actually assembled in order to effect, by force, a treasonable purpose, all those who perform any part, however minute, &c., and who are actually leagued in the general conspiracy, are traitors. But there must be an actual assembling of men for the treasonable purpose to constitute a levying of war."

The observations made on the preceding paragraph, apply to this: "A body of men actually assembled, in order to effect, by force, a treasonable purpose," must be a body assembled with such appearance of force as would warrant the opinion that they were assembled for the particular purpose; an assemblage to constitute an actual levying of war should be an assemblage with such appearance of force as would justify the opinion that they met for that purpose. This explanation, which is believed to be natural, certainly not a strained explanation of the words, derives some additional aid from the terms in which the paragraph last quoted commences: "It is not the intention of the court to say that no individual can be guilty of treason who has not appeared in arms against his country." These words seem to obviate an inference which might otherwise have been drawn from the preceding paragraph. They indicate that, in the mind of the court, the assemblage stated in that paragraph was an assemblage in arms; that the individuals who composed it had appeared in arms against their country; that is, in other words, that the assemblage was a military, a warlike assemblage.

The succeeding paragraph in the opinion, relates to a conspiracy, and serves to show that force and violence were in the mind of the court, and that there was no idea of extending the crime of treason, by construction, beyond the constitutional definition which had been given of it.

Returning to the case actually before the court, it is said "a design to overturn the Government of the United States in New Orleans, by force, would have been unquestionably a design which, if carried into execution, would have been treason, and the assemblage of a body of men for the purpose of carrying it into execution, would amount to levying of war against the United States."

Now what could reasonably be said to be an assemblage of a body of men for the purpose of overturning the Government of the United States in New Orleans by force? Certainly an assemblage in force, an assemblage prepared and intending to act with force, a military assemblage. The decisions heretofore made by the judges of the United States, are then declared to be in conformity with the principles laid down by the Supreme Court. Is this declaration compatible with the idea of departing from those opinions on a point within the contemplation of the court? The opinions of Judge Patterson and Judge Iredell are

said "to imply an actual assembling of men, though they rather designed to remark on the purpose to which the force was to be applied than on the nature of the force itself." This observation certainly indicates that the necessity of an assemblage of men was the particular point the court meant to establish, and that the idea of force was never separated from this assemblage.

The opinion of Judge Chase is next quoted with approbation. This opinion, in terms, requires the employment of force.

After stating the verbal communications said to have been made by Mr. Swartwout to General Wilkinson, the court says: "If these words import that the Government of New Orleans was to be revolutionized by force, although merely as a step to, or a mean of, exciting some greater projects, the design was unquestionably treasonable, and any assemblage of men for that purpose would amount to a levying of war."

The words "any assemblage of men," if construed to affirm that any two or three of the conspirators who might be found together after this plan had been formed, would be the act of levying war, would certainly be misconstrued. The sense of the expression "any assemblage of men" is restricted by the words "for this purpose." Now could it be in the contemplation of the court that a body of men would assemble for the purpose of revolutionizing New Orleans by force, who should not themselves be in force?

After noticing some difference of opinion among the judges respecting the import of the words said to have been used by Mr. Swartwout, the court proceeds to observe: "But whether this treasonable intention be really imputable to the plan or not, it is admitted that it must have been carried into execution by an open assemblage for that purpose, previous to the arrest of the prisoner, in order to consummate the crime as to him."

Could the court have conceived "an open assemblage" "for the purpose of overturning the Government of New Orleans by force" "to be only equivalent to a secret furtive assemblage, without the appearance of force?"

After quoting the words of Mr. Swartwout, from the affidavit, in which it was stated that Mr. Burr was levying an army of seven thousand men, and observing that the treason to be inferred from these words would depend on the intention with which it was levied, and on the progress which had been made in levying it, the court say, "the question then is, whether this evidence proves Colonel Burr to have advanced so far in levying an army as actually to have assembled them."

Actually to assemble an army of seven thousand men is unquestionably to place those who are so assembled in a state of open force. But as the mode of expression used in this passage might be misconstrued so far as to countenance the opinion that it would be necessary to assemble the whole army in order to constitute the fact of levying war, the court proceeds to say: "It is argued that since it cannot be necessary that the whole seven thousand men should be assembled, their commencing their march by detachments to the place of rendezvous must be sufficient to constitute the crime."

"This position is correct, with some qualification. It cannot be necessary that the whole army should assemble, and that the various parts which are to compose it should have combined. But it is necessary there should be an actual assemblage; and therefore this evidence should make the fact unequivocal.

"The travelling of individuals to the place of rendezvous, would, perhaps, not be sufficient. This would be an equivocal act, and has no warlike appearance. The meeting of particular bodies of men, and their marching from places of partial to a place of general rendezvous, would be such an assemblage."

The position here stated by the counsel for the prosecution is, that the army "commencing its march by detachments to the place of rendezvous, (that is, of the army,) must be sufficient to constitute the crime."

This position is not admitted by the court to be universally correct. It is said to be "correct with some qualification." What is that qualification?

"The travelling of individuals to the place of rendezvous," and by this term is not to be understood one individual by himself, but several individuals either separately or together, but not in military form, "would, perhaps, not be sufficient." Why not sufficient? Because, says the court, "this would be an equivocal act, and has no warlike appearance." The act, then, should be unequivocal, and should have a warlike appearance. It must exhibit, in the words of Sir Matthew Hale, *speciem belli*, the appearance of war. This construction is rendered in some measure necesary when we observe that the court is qualifying the position. "That the army, commencing their march by detachments to the place of rendezvous, must be sufficient to constitute the crime." In qualifying this position they say, "the travelling of individuals would, perhaps, not be sufficient." Now, a solitary individual travelling to any point, with any intent, could not, without a total disregard of language, be termed a marching detachment. The court, therefore, must have contemplated several individuals travelling together; and the words being used in reference to the position they were intended to qualify, would seem to indicate the distinction between the appearances attending the usual movement of a company of men for civil purposes, and that military movement which might, in correct language, be denominated "marching by detachments."

The court then proceeded to say, "the meeting of particular bodies of men, and the marching from places of partial to a place of general rendezvous, would be such an assemblage."

It is obvious from the context that the court must have intended to state a case which would in itself be unequivocal, because it would have a warlike appearance. The case stated, is that of distinct bodies of men assembling at different places and marching from these places of partial to a place of general rendezvous. When this has

been done, an assemblage is produced which would in itself be unequivocal. But when is it done? what is the assemblage here described? The assemblage formed of the different bodies of partial at a place of general rendezvous. In describing the mode of coming to this assemblage the civil term "travelling" is dropped, and the military term "marching" is employed. If this was intended as a definition of an assemblage which would amount to levying war, the definition requires an assemblage at a place of general rendezvous, composed of bodies of men who had previously assembled at places of partial rendezvous. But this is not intended as a definition; for, clearly, if there should be no places of partial rendezvous, if troops should imbody in the first instance, in great force, for the purpose of subverting the Government by violence, the act would be unequivocal; it would have a warlike appearance, and it would, according to the opinion of the Supreme Court, properly construed, and according to the English authorities, amount to levying war. But this, though not a definition, is put as an example; and surely it may be safely taken as an example. If different bodies of men, in pursuance of a treasonable design, plainly proved, should assemble in warlike appearances at places of partial rendezvous, and should march from those places to a place of general rendezvous, it is difficult to conceive how such a transaction could take place without exhibiting the appearance of war, without an obvious display of force. At any rate, a court in stating generally such a military assemblage as would amount to levying war, and having a case before them in which there was no assemblage whatever, cannot reasonably be understood in putting such an example, to dispense with those appearances of war which seem to be required by the general current of authorities. Certainly they ought not to be so understood when they say in express terms, that "it is more safe as well as more consonant to the principles of our Constitution, that the crime of treason should not be extended by construction to doubtful cases; and that crimes not already within the constitutional definition, should receive such punishment as the Legislature, in its wisdom, may provide."

After this analysis of the opinion of the Supreme Court, it will be observed, that the direct question whether an assemblage of men which might be construed to amount to a levying of war, must appear in force or in military form, was not in argument or in fact before the court, and does not appear to have been in terms decided. The opinion seems to have been drawn without particularly adverting to this question; and, therefore, upon a transient view of particular expressions, might inspire the idea that a display of force, that appearances of war were not necessary ingredients to constitute the fact of levying war. But upon a more intent and more accurate investigation of this opinion, although the terms *force* and *violence* are not employed as descriptive of the assemblage, such requisites are declared to be indispensable as can scarcely exist without the appearance of war and the existence of real force. It is said that war must be levied in fact; that the object must be one which is to be effected by force; that the assemblage must be such as to prove that this is its object; that it must not be an equivocal act, without a warlike appearance; that it must be an open assemblage for the purpose of force. In the course of this opinion, decisions are quoted and approved, which require the employment of force to constitute the crime. It seems extremely difficult, if not impossible, to reconcile these various declarations with the idea that the Supreme Court considered a secret, unarmed meeting, although that meeting be of conspirators, and although it met with a treasonable intent, as an actual levying of war. Without saying that the assemblage must be in force or in warlike form, they express themselves so as to show that this idea was never discarded, and they use terms which cannot be otherwise satisfied.

The opinion of a single judge certainly weighs as nothing if opposed to that of the Supreme Court; but if he was one of the judges who assisted in framing that opinion, if while the impressions under which it was framed were yet fresh upon his mind, he delivered an opinion on the same testimony, not contradictory to that which had been given by all the judges together, but showing the sense in which he understood terms that might be differently expounded, it may fairly be said to be in some measure explanatory of the opinion itself.

To the judge before whom the charge against the prisoner at the bar was first brought, the same testimony was offered with that which had been exhibited before the Supreme Court, and he was required to give an opinion in almost the same case. Upon this occasion he said, "war can only be levied by the employment of actual force. Troops must be imbodied; men must be assembled in order to levy war." Again he observed, "the fact to be proved in this case is an act of public notoriety. It must exist in the view of the world, or it cannot exist at all. The assembling of forces to levy war is a visible transaction, and numbers must witness it."

It is not easy to doubt what kind of assemblage was in the mind of the judge who used these expressions, and it is to be recollected that he had just returned from the Supreme Court, and was speaking on the very facts on which the opinion of that court was delivered.

The same judge, in his charge to the grand jury who found this bill, observed, "to constitute the fact of levying war, it is not necessary that hostilities have actually commenced by engaging the military force of the United States, or that measures of violence against the Government shall have been carried into execution. But levying war is a fact in the Constitution of which force is an indispensable ingredient. Any combination to subvert by force the Government of the United States, violently to dismember the Union, to compel a change in the administration, to coerce the repeal or adoption of a general law, is a conspiracy to levy war, and if the conspiracy

be carried into effect by the actual employment of force, by the imbodying and assembling men for the purpose of executing the treasonable design which was previously conceived, it amounts to levying of war. It has been held that arms are not essential to levy war, provided the force assembled be sufficient to attain or perhaps to justify attempting the object without them." This paragraph is immediately followed by a reference to the opinion of the Supreme Court.

It requires no commentary upon these words to show that, in the opinion of the judge who uttered them, an assemblage of men which should constitute the fact of levying war must be an assemblage in force, and that he so understood the opinion of the Supreme Court. If, in that opinion, there may be found in some passages a want of precision, an indefiniteness of expression, which has occasioned it to be differently understood by different persons, that may well be accounted for when it is recollected that in the particular case there was no assemblage whatever. In expounding that opinion the whole should be taken together, and in reference to the particular case in which it was delivered. It is, however, not improbable that the misunderstanding has arisen from this circumstance. The court unquestionably did not consider arms as an indispensable requisite to levy war; an assemblage adapted to the object might be in a condition to effect or to attempt it without them. Nor did the court consider the actual application of the force to the object at all times an indispensable requisite; for an assemblage might be in a condition to apply force, might be in a state adapted to real war, without having made the actual application of that force. From these positions, which are to be found in the opinion, it may have been inferred, it is thought too hastily, that the nature of the assemblage was unimportant, and that war might be considered as actually levied by any meeting of men, if a criminal intention can be imputed to them by testimony of any kind whatever.

It has been thought proper to discuss this question at large, and to review the opinion of the Supreme Court, although this court would be more disposed to leave the question of fact, whether an overt act of levying war was committed on Blannerhasset's island to the jury under this explanation of the law, and to instruct them that, unless the assemblage of Blannerhasset's island was an assemblage in force, was a military assemblage in a condition to make war, it was not a levying of war, and that they could not construe it into an act of war, than to arrest the further testimony which might be offered to connect the prisoner with that assemblage, or to prove the intention of those who assembled together at that place. This point, however, is not to be understood as decided. It will, perhaps, constitute an essential inquiry in another case.

Before leaving the opinion of the Supreme Court entirely, on the question of the nature of the assemblage which will constitute an act of levying war, this court cannot forbear to ask why is an assemblage absolutely required? Is it not to judge in some measure of the end by the proportion which the means bear to the end? Why is it that a single armed individual, entering a boat and sailing down the Ohio for the avowed purpose of attacking New Orleans, could not be said to levy war? Is it not that he is apparently not in a condition to levy war? If this be so, ought not the assemblage to furnish some evidence of its intention and capacity to levy war before it can amount to levying war? And ought not the Supreme Court, when speaking of an assemblage for the purpose of effecting a treasonable object by force, be understood to indicate an assemblage exhibiting the appearance of force?

The definition of the attorney of the United States deserves notice in this respect. It is, "when there is an assemblage of men convened for the purpose of effecting by force a treasonable object, which is meant to be employed before the assemblage disperses, this is treason."

To read this definition without adverting to the argument, we should infer that the assemblage was itself to effect by force the treasonable object, not to join itself to some other bodies of men, and then to effect the object by their combined force. Under this construction, it would be expected the appearance of the assemblage would bear some proportion to the object, and would indicate the intention. At any rate, that it would be an assemblage in force. This construction is most certainly not that which was intended, but it serves to show that general phrases must always be understood in reference to the subject-matter, and to the general principles of law.

On that division of the subject which respects the merits of the case connected with the pleadings, two points are also made:

1st. That this indictment having charged the prisoner with levying war on Blannerhasset's island, and containing no other overt act, cannot be supported by proof that war was levied at that place by other persons in the absence of the prisoner, even admitting those persons to be connected with him in one common treasonable conspiracy.

2dly. That admitting such an indictment could be supported by such evidence, the previous conviction of some person who committed the act which is said to amount to levying war, is indispensable to the conviction of a person who advised or procured that act.

As to the first point, the indictment contains two counts, one of which charges that the prisoner, with a number of persons unknown, levied war on Blannerhasset's island, in the county of Wood, in the district of Virginia, and the other adds the circumstance of their proceeding from that island down the river for the purpose of seizing New Orleans by force.

In point of fact, the prisoner was not on Blannerhasset's island, nor in the county of Wood, nor in the district of Virginia.

In considering this point, the court is led first to inquire whether an indictment for levying war must specify an overt act, or would be sufficient if it merely charged the prisoner in general terms

with having levied war, omitting the expression of place or circumstance.

The place in which a crime was committed is essential to an indictment, were it only to show the jurisdiction of the court. It is also essential for the purpose of enabling the prisoner to make his defence. That at common law an indictment would have been defective which did not mention the place in which the crime was committed, can scarcely be doubted. For this it is sufficient to refer to Hawkins, b. 2, ch. 25, sect. 84, and ch. 23, sect. 91. This necessity is rendered the stronger by the constitutional provision, that the offender "shall be tried in the State and district wherein the crime shall have been committed," and by the act of Congress, which requires that twelve petty jurors at least shall be summoned from the county where the offence was committed.

A description of the particular manner in which the war was levied seems also essential to enable the accused to make his defence. The law does not expect a man to be prepared to defend every act of his life which may be suddenly and without notice alleged against him. In common justice, the particular fact with which he is charged ought to be stated, and stated in such a manner as to afford a reasonable certainty of the nature of the accusation, and the circumstances which will be adduced against him. The general doctrine on the subject of indictments is full to this point. Foster, (p. 149,) speaking of the treason of compassing the King's death, says "from what has been said, it followeth that in every indictment for this species of treason, and indeed for levying war and adhering to the King's enemies, an overt act must be alleged and proved. For the overt act is the charge to which the prisoner must apply his defence."

In page 220, Foster repeats this declaration. It is also laid down in Hawk. b. 8, ch. 17, sec. 29; 1st Hale, 121; 1st East, 116; and by the other authorities cited, especially Vaughan's case. In corroboration of this opinion, it may be observed, that treason can only be established by the proof of overt acts, and that by the common law, as well as by the statute of 7th of William III., those overt acts only which are charged in the indictment can be given in evidence, unless, perhaps, as corroborative testimony after the overt acts are proved. That clause in the Constitution, too, which says that in all criminal prosecutions the accused shall enjoy the right "to be informed of the nature and cause of the accusation," is considered as having a direct bearing on this point. It secures to him such information as will enable him to prepare for his defence.

It seems, then, to be perfectly clear that it would not be sufficient for an indictment to allege generally that the accused had levied war against the United States. The charge must be more particularly specified, by laying what is termed an overt act of levying war. The law relative to an appeal, as cited from Stamford, is strongly corroborative of this opinion.

If it be necessary to specify the charge in the indictment, it would seem to follow, irresistibly, that the charge must be proved as laid.

All the authorities which require an overt act require also that this overt act should be proved. The decision in Vaughan's case is particularly in point. Might it be otherwise, the charge of an overt act would be a mischief instead of an advantage to the accused. It would lead him from the true cause and nature of the accusation, instead of informing him respecting it.

But it is contended, on the part of the prosecution, that, although the accused had been never with the party which assembled at Blannerhasset's island, and was at the time at a great distance and in a different State, he was yet legally present, and therefore may properly be charged in the indictment as being present in fact.

It is, therefore, necessary to inquire whether, in this case, the doctrine of constructive presence can apply.

It is conceived by the court to be possible, that a person may be concerned in a treasonable conspiracy, and yet be legally, as well as actually, absent while some one act of treason is perpetrated. If a rebellion should be so extensive as to spread through every State in the Union, it will scarcely be contended that every individual concerned in it is legally present at every overt act committed in the course of that rebellion. It would be a very violent presumption (indeed, too violent to be made without clear authority) to presume that, even the chief of the rebel army was legally present at every such overt act. If the main rebel army, with the chief at its head, should be prosecuting war at one extremity of our territory, say in New Hampshire, if this chief should be there captured and sent to the other extremity for the purpose of trial; if his indictment, instead of alleging an overt act which was true, in point of fact, should allege that he had assembled some small party, which, in truth, he had not seen; and had levied war, by engaging in a skirmish in Georgia, at a time when, in reality, he was fighting a battle in New Hampshire—if such evidence would support such an indictment by the fiction that he was legally present, though really absent, all would ask to what purpose are those provisions in the Constitution which direct the place of trial, and ordain that the accused shall be informed of the nature and cause of the accusation?

But, that a man may be legally absent, who has counselled and procured a treasonable act, is proved by all those books which treat upon the subject, and which concur in declaring that such a person is a principal traitor, not because he was legally present, but because, in treason, all are principals. Yet the indictment, I say, upon general principles, would charge him according to the truth of the case. Lord Coke says, "if many conspire to levy war, and some of them do levy the same, according to the conspiracy, this is high treason in all." Why? Because all were legally present when the war was levied? No. "For in treason," continues Lord Coke, "all be principals, and war is levied." In this case the indictment, rea-

soning from analogy, would not charge that the absent conspirators were present, but would state the truth of the case. If the conspirator had done nothing which amounted to levying war, and if, by our Constitution, the doctrine that an accessary becomes a principal be not adopted, in consequence of which the conspirator could not be condemned under an indictment, stating the truth of the case, it would be going very far to say that this defect, if it be termed one, may be cured by an indictment stating the case untruly.

This doctrine of Lord Coke has been adopted by all subsequent writers; and it is generally laid down, in the English books, that whatever will make a man an accessary in felony will make him a principal in treason; but it is no where suggested that he is, by construction, to be considered as present, when in point of fact he was absent.

Foster, 3d, has been particularly quoted, and certainly he is precisely in point. "It is well known," says Foster, "that in the language of the case there are no accessaries in high treason; all are principals. Every instance of incitement, aid, or protection, which, in the case of felony, will render a man an accessary before or after the fact, in the case of high treason, whether it be treason at common law or by statute, will make him a principal in treason." The cases of incitement and aid are cases put as examples of a man's becoming a principal in treason, not because he was legally present, but by force of that maxim in the common law, that whatever will render a man an accessary at common law, will render him a principal in treason. In other passages, the words "command" or "procure" are to indicate the same state of things, that is, a treasonable assemblage produced by a man who is not himself in that assemblage.

In point of law, then, the man who incites, aids, or procures a treasonable act, is not merely, in consequence of that incitement, aid, or procurement, legally present when that act is committed.

If it does not result from the nature of the crime, that all who are concerned in it are legally present at every overt act, then each case depends upon its own circumstances; and, to judge how far the circumstances of any case can make him legally present who is in fact absent, the doctrine of constructive presence must be examined.

Hale, in his 1 vol. p. 615, says, "regularly, no man can be a principal in felony unless he be present." In the same page he says, "an accessary *before* is he that, being absent at the time of the felony committed, doth yet procure, counsel, or command another to commit a felony." The books are full of passages which state this to be the law. Foster, in showing what acts of concurrence will make a man a principal, says, "he must be present at the perpetration, otherwise he can be no more than an accessary before the fact."

These strong distinctions would be idle to treason; at any rate, they would be inapplicable, if they were to be entirely lost in the doctrine of constructive presence.

Foster adds, p. 349, "when the law requireth the presence of the accomplice at the perpetration of the fact in order to render him a principal, it doth not require a strict actual immediate presence, such a presence as would make him an eye or ear witness of what passeth." The terms used by Foster are such as would be employed by a man intending to show the necessity that the absent person should be near at hand, although, from the nature of the thing, no precise distance could be marked out. An inspection of the cases, from which Foster drew this general principle, will serve to illustrate it.—(Hale, 439.) In all these cases, put by Hale, the whole party set out together to commit the very fact charged in the indictment, or to commit some other unlawful act, in which they are all to be personally concerned at the time and place, and are, at the very time when the criminal fact is committed, near enough to give actual personal aid and assistance to the man who perpetrated it. Hale, in p. 449, giving the reason for the decision in the case of the word decree, says, "they all came with an intent to steal the deer, and consequently the law supposes that they came all with the intent to oppose all that should hinder them in that design." The original case says this was their resolution. This opposition would be a personal opposition. This case, even as stated by Hale, would clearly not comprehend any man who entered into the combination, but who, instead of going to the park where the murder was committed, should not set out with the others, should go to a different park, or should even lose his way.—Hale, 534.

In both cases here stated, the persons actually set out together, and were near enough to assist in the commission of the act. That in the case of Pudsy, the felony was, as stated by Hale, a different felony from that originally intended, is unimportant in regard to the particular principle now under consideration, so far as respected distance; as respected capacity, to assist in case of resistance, it is the same as if the robbery had been that which was originally designed. The case, in the original report, shows that the felony committed was in fact in pursuance of that originally designed. Foster (350) plainly supposes the same particular design, not a general design composed of many particular distinct facts. He supposes them to be co-operating with respect to that particular design. This may be illustrated by a case which is perhaps common. Suppose a band of robbers confederated for the general purpose of robbing. They set out together, or in parties, to rob a particular individual, and each performs the part assigned to him. Some ride up to the individual and demand his purse; others watch out of sight to intercept those who might be coming to assist the man on whom the robbery is to be committed. If murder or robbery actually take place, all are principals, and all, in construction of law, are present. But suppose they set out at the same time or at different times, by different roads, to attack and rob different individuals or different companies, to commit distinct acts of robbery. It has never been contended that those who committed one act

of robbery, or who failed altogether, were constructively present at the act of those who were associated with them in the common object of robbery, who were to share the plunder, but who did not assist at the particular fact. They do, indeed, belong to the general party, but they are not of the particular party which committed this fact. Foster concludes this subject by observing that, "in order to render a person an accomplice and a principal in felony, he must be aiding and abetting at the fact, or ready to afford assistance if necessary." That is, at the particular fact which is charged, he must be ready to render assistance to those who are committing that particular fact; he must, as is stated by Hawkins, be ready to give immediate and direct assistance.

All the cases to be found in the books go to the same point. Let them be applied to that under consideration.

The whole treason laid in this indictment is the levying of war in Blannerhasset's island; and the whole question, to which the inquiry of the court is now directed, is, whether the prisoner was legally present at that fact.

I say this is the whole question, because the prisoner can only be convicted on the overt act laid in the indictment. With respect to this prosecution, it is as if no other overt act existed. If other overt acts can be inquired into, it is for the sole purpose of proving the particular fact charged; it is as evidence of the crime consisting of this particular fact, not as establishing the general crime by a distinct fact.

The counsel for the prosecution have charged those engaged in the defence with considering the overt act as the treason, whereas it ought to be considered solely as the evidence of the treason; but the counsel for the prosecution seem themselves not to have sufficiently adverted to this clear principle, that though the overt act may not be itself the treason, it is the sole act of that treason which can produce conviction; it is the sole point in issue between the parties. And the only division of that point, if the expression be allowed, which the court is now examining, is the coustructive presence of the prisoner at the fact charged.

To return, then, to the application of the cases.

Had the prisoner set out with the party from Beaver for Blannerhasset's island, or perhaps had he set out for that place, though not from Beaver, and had arrived in the island, he would have been present at the fact; had he not arrived in the island, but had taken a position near enough to co-operate with those on the island, to assist them in any act of hostility, or to aid them if attacked, the question whether he was constructively present would be a question compounded of law and fact, which would be decided by the jury, with the aid of the court, so far as respected the law. In this case the accused would have been of the particular party assembled on the island, and would have been associated with them in the particular act of levying war said to have been committed on the island.

But if he was not with the party at any time before they reached the island; if he did not join them there, or intend to join them there; if his personal co-operation in the general plan was to be afforded elsewhere, at a great distance, in a different State; if the overt acts of treason to be performed by him were to be distinct overt acts; then he was not of the particular party assembled at Blannerhasset's island, and was not constructively present, aiding and assisting in the particular act which was there committed.

The testimony on this point, so far as it has been delivered, is not equivocal. There is not only no evidence that the accused was of the particular party which assembled on Blannerhasset's island, but the whole evidence shows he was not of that party.

In felony, then, admitting the crime to have been completed on the island, and to have been advised, procured, or commanded by the accused, he would have been incontestably an accessary, and not a principal.

But in treason, it is said, the law is otherwise, because the theatre of action is more extensive.

The reasoning applies in England as strongly as in the United States. While in '15 and '45 the family of Stuart sought to regain the Crown they had forfeited, the struggle was for the whole kingdom; yet no man was ever considered as legally present at one place when actually at another, or as aiding in one transaction while actually employed in another.

With a perfect knowledge that the whole nation may be a theatre of action, the English books unite in declaring, that he who counsels, procures, or aids treason, is guilty accessarily and solely in virtue of the common law principle, that what will make a man an accessary in felony makes him a principal in treason. So far from considering a man as constructively present at every overt act of the general treason in which he may have been concerned, the whole doctrine of the books limits the proof against him to those particular overt acts of levying war with which he is charged.

What would be the effect of a different doctrine? Clearly that which has been stated. If a person levying war in Kentucky may be said to be constructively present and assembled with a party carrying on war in Virginia, at a great distance from him, then he is present at every overt act performed anywhere; he may be tried in any State on the continent, where any overt act has been committed; he may be proved to be guilty of an overt act laid in the indictment in which he had no personal participation, by proving that he advised it, or that he committed other acts.

This is, perhaps, too extravagant to be in terms maintained. Certainly, it cannot be supported by the doctrines of the English law.

The opinion of Judge Patterson in Mitchell's case has been cited on this point. (2 Dal. 348.)

The indictment is not specially stated; but from the case as reported, it must have been either general for levying war in the county of Allegany, and the overt act laid must have been the assemblage of men and the levying of war in that county; or it must have given a particular detai

of the treasonable transactions in that county. The first supposition is the most probable; but let the indictment be in the one form or the other, the result is the same. The facts of the case are, that a large body of men, of whom Mitchell was one, assembled at Braddock's Field, in the county of Allegany, for the purpose of committing acts of violence at Pittsburg; that there was also an assemblage at a different time at Couche's Fort, at which the prisoner also attended. The general and avowed object of that meeting was to concert measures for resisting the execution of a public law. At Couche's Fort, the resolution was taken to attack the house of the inspector, and the body there assembled marched to the house and attacked it. It was proved by the competent number of witnesses, that he was at Couche's Fort armed; that he offered to reconnoitre the house to be attacked; that he marched with the insurgents towards the house; that he was with them after the action, attending the body of one of his comrades who was killed in it. One witness swore positively that he was present at the burning of the house, and a second witness said that "it ran in his head that he had seen him there." That a doubt should exist in such a case as this, is a strong evidence of the necessity that the overt act should be unequivocally proved by two witnesses.

But what was the opinion of the judge in this case? Couche's Fort and Neville's house being in the same county, the assemblage having been at Couche's Fort, and the resolution to attack the house having been there taken, the body having for the avowed purposes moved in execution of that resolution towards the house to be attacked, he inclined to think that the act of marching was in itself levying war. If it was, then the overt act laid in the indictment was consummated by the assemblage at Couche's and the marching from thence, and Mitchell was proved to be guilty by more than two positive witnesses. But, without deciding this to be the law, he proceeded to consider the meeting at Couche's, the immediate marching to Neville's house, the attack and burning of the house, as one transaction. Mitchell was proved by more than two positive witnesses to have been in that transaction, to have taken an active part in it; and the judge declared it to be unnecessary that all should have seen him at the same time and place.

But suppose not a single witness had proved Mitchell to have been at Couche's, or on the march, or at Neville's. Suppose he had been at the time notoriously absent in a different State. Can it be believed by any person who observes the caution with which Judge Patterson required the Constitional proofs of two witnesses to the same overt act, that he would have said Mitchell was constructively present, and might, on that straining of a legal fiction, be found guilty of treason? Had he delivered such an opinion, what would have been the language of this country respecting it? Had he given this opinion, it would have required all the correctness of his life to strike his name from that bloody list in which the name of Jeffries is enrolled.

But to estimate the opinion in Mitchell's case, let its circumstances be transferred to Burr's case. Suppose the body of men assembled in Blannerhasset's island had previously met at some other place in the same county, and that Burr had been proved to be with them by four witnesses; that the resolution to march to Blannerhasset's island for a treasonable purpose had been there taken; that he had been seen on the march with them; that one witness had seen him on the island, that another thought he had seen him there; that he had been seen with the party directly after leaving the island; that this indictment had charged the levying of war in Wood county generally; the cases would then have been perfectly parallel, and the decisions would have been the same.

In conformity with principle and with authority, then, the prisoner at the bar was neither legally nor actually present at Blannerhasset's island; and the court is strongly inclined to the opinion that, without proving an actual or legal presence by two witnesses, the overt act laid in this indictment cannot be proved.

But this opinion is controverted on two grounds.

The first is, that the indictment does not charge the prisoner to have been present;

The second, that, although he was absent, yet, if he caused the assemblage, he may be indicted as being present, and convicted on evidence that he caused the treasonable act.

The first position is to be decided by the indictment itself. The court understands the allegation differently from the attorney for the United States. The court understands it to be directly charged, that the prisoner did assemble with the multitude, and did march with them. Nothing will more clearly test this construction than putting the case into a shape which it may possibly take. Suppose the law to be, that the indictment would be defective unless it alleged the presence of the person indicted at the act of treason. If, upon a special verdict, facts should be found which amounted to a levying of war by the accused, and his counsel should insist that he could not be condemned because the indictment was defective in not charging that he was himself one of the assemblage which constituted the treason, or because it alleged the procurement defectively, would the attorney admit this construction of his indictment to be correct? I am persuaded that he would not, and that he ought not to make such a concession. If, after a verdict, the indictment ought to be construed to allege that the prisoner was one of the assemblage at Blannerhasset's island, it ought to be so construed now. But this is unimportant, for if the indictment alleges that the prisoner procured the assemblage, that procurement becomes part of the overt act, and must be proved, as will be shown hereafter.

The second position is founded on 1 Hale, 214, 288, and 1 East, 127.

While I declare that this doctrine contradicts every idea I had ever entertained on the subject of indictments, since it admits that one case may be stated and a very different case may be proved, I will acknowledge that it is countenanced by the

authorities adduced in its support. To counsel or advise a treasonable assemblage, and to be one of that assemblage, are certainly distinct acts, and, therefore, ought not to be charged as the same act. The great objection to this mode of proceeding is, that the proof essentially varies from the charge in the character and essence of the offence, and in the testimony by which the accused is to defend himself. These dicta of Lord Hale, therefore, taken in the extent in which they are understood by the counsel for the United States, seem to be repugnant to the declarations we find every where, that an overt act must be laid and must be proved. No case is cited by Hale in support of them; and I am strongly inclined to the opinion, that, had the public received his corrected, instead of his original manuscript, they would, if not expunged, have been restrained in their application to cases of a particular description. Laid down generally, and applied universally to all cases of treason, they are repugnant to the principles for which Hale contends, for which all the elementary writers contend, and from which courts have in no case, either directly reported or referred to in the books, ever departed. These principles are, that the indictment must give notice of the offence; that the accused is only bound to answer the particular charge which the indictment contains, and that the overt act laid is that particular charge. Under such circumstances, it is only doing justice to Hale to examine his dicta; and if they will admit of being understood in a limited sense, not repugnant to his own doctrines, nor to the general principles of law, to understand them in that sense.

"If many conspire to counterfeit, or counsel, or abet in it, and one of them doth the fact upon that counselling or conspiracy, it is treason in all, and they may be all indicted for counterfeiting generally within the statute, for in such case, in treason, all are principals."

This is laid down as applicable singly to the treason of counterfeiting the coin, and is not applied by Hale to other treasons. Had he designed to apply the principle universally, he would have stated it as a general proposition; he would have laid it down when treating on other branches of the statute, as well as in the chapter respecting the coin; he would have laid it down when treating on indictments generally. But he has done neither. Every sentiment bearing in any manner on this point, which is to be found in Lord Hale while on the doctrine of levying war, or on the general doctrine of indictments, militates against the opinion, that he considered the proposition as more extensive than he has declared it to be. No court could be justified in extending the dictum of a judge beyond its terms, to cases in which he has expressly treated, to which he has not himself applied it, and on which, he, as well as others, has delivered opinions which that dictum would overrule. This would be less justifiable, if there should be a clear legal distinction indicated by the very terms in which the judge has expressed himself between the particular case to which alone he has applied the dictum, and other cases, to which the court is required to extend it.

There is this clear legal distinction: "They may," says Judge Hale, "be indicted for counterfeiting generally." But, if many conspire to levy war, and some actually levy it, they may not be indicted for levying war generally. The books concur in declaring that they cannot be so indicted. A special overt act of levying war must be laid. This distinction between counterfeiting the coins, and that class of treasons among which levying war is placed, is taken in the statute of Edward III. That statute requires an overt act of levying war to be laid in the indictment, and does not require an overt act of counterfeiting the coin to be laid. If in a particular case, where a general indictment is sufficient, it be stated that the crime may be charged generally, according to the legal effect of the act, it does not follow that, in other cases, where a general indictment would be insufficient, where an overt act must be laid, that this overt act need not be laid according to the real fact. Hale, then, is to be reconciled with himself, and with the general principles of law, only by permitting the limits which he has himself given to his own dictum, to remain where he has placed them.

In page 238, Hale is speaking generally of the receiver of a traitor, and is stating in what such receiver partakes of an accessary. 1st. "His indictment must be special of the receipt, and not generally that he did the thing; which may be otherwise in case of one that is procurer, counsellor, or consenter."

The words "*may* be otherwise," do not clearly convey the idea that it is universally otherwise. In all cases of a receiver, the indictment *must* be special on the receipt, and not general. The words "it *may* be otherwise in case of a procurer, &c.," signify that it may be otherwise in all treasons, or that it may be otherwise in some treasons. If it may be otherwise in some treasons, without contradicting the doctrines of Hale himself, as well as of other writers, but cannot be otherwise in all treasons without such contradiction, the fair construction is, that Hale used these words in their restricted sense; that he used them in reference to treasons in which a general indictment would lie; not to treasons where a general indictment would not lie, but an overt act of the treason must be charged. The two passages of Hale, thus construed, may, perhaps, be law, and may leave him consistent with himself. It appears to the court to be the fair way of construing them.

These observations relative to the passages quoted from Hale apply to that quoted from East, who obviously copies from Hale, and relies upon his authority.

Upon this point, Keeling, 26, and 1st Hale, 626, have also been relied upon. It is stated in both, that, if a man be indicted as a principal and acquitted, he cannot afterwards be indicted as accessary before the fact; whence it is inferred, not without reason, that evidence of accessorial guilt may be received on such an indictment. Yet no case is found in which the question has been made and decided. The objection has never been taken at a trial and overruled, nor do the books say it

would be overruled. Were such a case produced, its application would be questionable. Keeling says, an accessary before the fact is, *quodammodo*, in some manner, guilty of the fact. The law may not require that the manner should be stated; for in felony, it does not require that an overt act should be laid. The indictment, therefore, may be general; but an overt act of levying war must be laid. These cases, then, prove, in their utmost extent, no more than cases previously cited from Hale and East. This distinction between indictments which may state the fact generally, and those which must lay it specially, bears some analogy to a general and a special action on the case. In a general action the declaration may lay the *assumpsit* according to the legal effect of the transaction; but, in a special action on the case, the declaration must state the material circumstances truly, and they must be proved as stated. This distinction also derives some aid from a passage in Hale, 625, immediately preceding that which has been cited at the bar. He says: "If A be indicted as principal, and B as accessary, *before* or *after*, and both be acquitted, yet B may be indicted as principal, and the former acquittal as accessary is no bar."

The crimes, then, are not the same, and may not indifferently be tried under the same indictment. But why is it that an acquittal as principal may be pleaded in bar to an indictment as accessary, while an acquittal as accessary may not be pleaded in bar to an indictment as principal? If it be answered that the accessorial crime may be given in evidence on an indictment as principal, but that the principal crime may not be given in evidence on an indictment as accessary, the question recurs, on what legal ground does this distinction stand? I can imagine only this: An accessary being *quodammodo* a principal in indictments where the law does not require the manner to be stated, which need not to be special, evidence of accessorial guilt, if the punishment be the same, may possibly be received; but every indictment as an accessary must be special. The very allegation that he is an accessary must be a special allegation, and must show how he became an accessary. The charges of this special indictment, therefore, must be proved as laid; and no evidence which proves the crime in a form substantially different can be received. If this be the legal reason for the distinction, it supports the exposition of these dicta which has been given. If it be not the legal reason, I can conceive no other.

But suppose the law to be as is contended by the counsel for the United States. Suppose an indictment charging an individual with personally assembling among others, and thus levying war, may be satisfied with the proof that he caused the assemblage; what effect will this law have upon this case?

The guilt of the accused, if there be any guilt, does not consist in the assemblage, for he was not a member of it. The simple act of assemblage no more affects one absent man than another. His guilt, then, consists in procuring the assemblage; and upon this fact depends his criminality. The proof relative to the character of an assemblage must be the same, whether a man be present or absent. In the general, to charge any individual with the guilt of an assemblage, the fact of his presence must be proved. It constitutes an essential part of the overt act. If, then, the procurement be substituted in the place of presence, does it not also constitute an essential part of the overt act? Must it not also be proved? Must it not be proved in the same manner that presence must be proved? If, in one case, the presence of the individual makes the guilt of the assemblage his guilt, and, in the other case, the procurement by the individual makes the guilt of the assemblage his guilt, then presence and procurement are equally component parts of the overt act, and equally require two witnesses.

Collateral points may, say the books, be proved according to the course of common law; but is this a collateral point? This cannot be. The presence of the party, where presence is necessary, being a part of the overt act, must be positively proved by two witnesses. No presumptive evidence, no facts from which presence may be conjectured or inferred, will satisfy the Constitution and the law. If procurement take the place of presence, and become part of the overt act, then no presumptive evidence, no facts from which the procurement may be conjectured or inferred, can satisfy the Constitution and the law. The mind is not to be led to the conclusion that the individual was present by a train of conjectures or inferences, or of reasoning; the fact must be proved by two witnesses. Neither, where procurement supplies the want of presence, is the mind to be conducted to the conclusion that the accused procured the assembly, by a train of conjectures, of inferences, or of reasoning; the fact itself must be proved by two witnesses, and must have been committed within the district.

If it be said that the advising or procurement of treason is a secret transaction, which can scarcely ever be proved in the manner required by this opinion, the answer which will readily suggest itself is, that the difficulty of proving a fact will not justify conviction without proof. Certainly, it will not justify conviction without a direct and positive witness in a case where the Constitution requires two. The more correct inference from this circumstance would seem to be, that the advising of the fact is not within the Constitutional definition of the crime. To advise or procure a treason is in the nature of conspiring or plotting treason, which is not treason in itself.

If, then, the doctrines of Keeling, Hale, and East, are to be understood in the sense in which they are pressed by the counsel for the prosecution, and are applicable in the United States, the fact that the accused procured the assemblage on Blannerhasset's island must be proved, not circumstantially, but positively, by two witnesses, to charge him with that assemblage. But there are still other most important considerations which must be well weighed before this doctrine can be applied to the United States.

The eighth amendment to the Constitution has

been pressed with great force, and it is impossible not to feel its application to this point. The accused cannot be truly said to be "informed of the nature and cause of the accusation," unless the indictment shall give him that notice which may reasonably suggest to him the point on which the accusation turns, so that he may know the course to be pursued in his defence.

It is also well worthy of consideration, that this doctrine, so far as it respects treason, is entirely supported by the operation of the common law, which is said to convert the accessary before the fact into the principal, and to make the act of the principal his act. The accessary before the fact is not said to have levied war. He is not said to be guilty under the statute. But the common law attaches to him the guilt of that fact which he has advised or procured, and, as contended, makes it his act. This is the operation of the common law, not the operation of the statute. It is an operation, then, which can only be performed where the common law exists to perform it. It is the creature of the common law, and the creature presupposes its creator. To decide, then, that this doctrine is applicable to the United States, would seem to imply the decision that the United States, as a nation, have a common law which creates and defines the punishment of crimes accessorial in their nature. It would imply the further decision, that these accessorial crimes are not, in the case of treason, excluded by the definition of treason given in the Constitution. I will not pretend that I have not individually an opinion on these points, but it is one which I should give only in a case absolutely requiring it, unless I could confer respecting it with the judges of the Supreme Court.

I have said that this doctrine cannot apply to the United States without implying those decisions respecting the common law which I have stated, because, should it be true, as is contended, that the Constitutional definition of treason comprehends him who advises or procures an assemblage that levies war, it would not follow that such adviser or procurer might be charged as having been present at the assemblage. If the adviser or procurer is within the definition of levying war, and, independent of the agency of the common law, does actually levy war, then the advisement or procurement is an overt act of levying war. If it be the overt act on which he is to be convicted, then it must be charged in the indictment; for he can only be convicted on proof of the overt acts which are charged.

To render this distinction more intelligible, let it be recollected, that although it should be conceded that since the statute of William and Mary, he who advises or procures a treason, may, in England, be charged as having committed that treason, by virtue of the common law operation, which is said, so far as respects the indictment, to unite the accessorial to the principal offence, and permit them to be charged as one, yet it can never be conceded that he who commits one overt act under the statute of Edward, can be charged and convicted on proof of another overt act. If, then, procurement be an overt act of treason under the Constitution, no man can be convicted for the procurement under an indictment charging him with actually assembling, whatever may be the doctrine of the common law in the case of an accessorial offender.

It may not be improper in this place again to advert to the opinion of the Supreme Court, and to show that it contains nothing contrary to the doctrine now laid down. That opinion is, that an individual may be guilty of treason "who has not appeared in arms against his country; that if war be actually levied, that is, if a body of men be actually assembled for the purpose of effecting by force a treasonable object, all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors."

This opinion does not touch the case of a person who advises or procures an assemblage, and does nothing further. The advising, certainly, and perhaps the procuring, is more in the nature of a conspiracy to levy war, than of the actual levying of war. According to the opinion, it is not enough to be leagued in the conspiracy, and that war be levied, but it is also necessary to perform a part; that part is the act of levying war. This part, it is true, may be minute; it may not be the actual appearance in arms; and it may be remote from the scene of action, that is, from the place where the army is assembled; but it must be a part, and that part must be performed by a person who is leagued in the conspiracy. This part, however minute or remote, constitutes the overt act on which alone the person who performs it can be convicted.

The opinion does not declare that the person who has performed this remote and minute part, may be indicted for a part which was, in truth, performed by others, and convicted on their overt acts. It amounts to this, and nothing more: that when war is actually levied, not only those who bear arms, but those who are leagued in the conspiracy, and who perform the various distinct parts which are necessary for the prosecution of war, do, in the sense of the Constitution, levy war. It may, possibly, be the opinion of the Supreme Court, that those who procure a treason and do nothing further, are guilty under the Constitution; I only say that opinion has not yet been given; still less has it been indicated that he who advises shall be indicted as having performed the fact.

It is, then, the opinion of the court, that this indictment can be supported only by testimony which proves the accused to have been actually or constructively present when the assemblage took place on Blannerhasset's island, or by the admission of the doctrine that he who procures an act may be indicted as having performed that act.

It is further the opinion of the court, that there is no testimony whatever which tends to prove that the accused was actually or constructively present when that assemblage did take place. Indeed, the contrary is most apparent. With respect

to admitting proof of procurement to establish a charge of actual presence, the court is of opinion, that, if this be admissible in England on an indictment for levying war, which is far from being conceded, it is admissible only by virtue of the operation of the common law upon the statute, and, therefore, is not admissible in this country, unless by virtue of a similar operation; a point far from being established, but on which, for the present, no opinion is given. If, however, this point be established, still the procurement must be proved in the same manner and by the same kind of testimony which would be required to prove actual presence.

The second point in this division of the subject is, the necessity of adducing the record of the previous conviction of some one person who committed the fact alleged to be treasonable.

This point presupposes the treason of the accused, if any has been committed, to be accessorial in its nature. Its being of this description, according to the British authorities, depends on the presence or absence of the accused at the time the fact was committed. The doctrine on this subject is well understood, has been copiously explained, and need not be repeated. That there is no evidence of his actual or legal presence, is a point already discussed and decided. It is then apparent that, but for the exception to the general principle which is made in cases of treason, those who assembled at Blannerhasset's island, if that assemblage was such as to constitute the crime, would be principals; and those who might really have caused that assemblage, although, in truth, the chief traitors, would, in law, be accessaries.

It is a settled principle in the law, that the accessary cannot be guilty of a greater offence than his principal. The maxim is *accessorius sequitur naturam sui principalis;* the accessary follows the nature of his principal. Hence results the necessity of establishing the guilt of the principal before the accessary can be tried. For the degree of guilt which is incurred by counselling or commanding the commission of a crime depends upon the actual commission of that crime. No man is an accessory to murder unless the fact has been committed.

The fact can only be established in a prosecution against the person by whom a crime has been perpetrated. The law supposes a man more capable of defending his own conduct than any other person, and will not tolerate that the guilt of A shall be established in a prosecution against B. Consequently, if the guilt of B depends on the guilt of A, A must be convicted before B can be tried. It would exhibit a monstrous deformity, indeed, in our system, if B might be executed for being accessary to a murder committed by A, and A should afterward, upon a full trial, be acquitted of the fact. For this obvious reason, although the punishment of a principal and accessary was originally the same, and although in many instances it is still the same, the accessary could in no case be tried before the conviction of his principal; nor can he yet be tried previous to such conviction, unless he require it, or unless a special provision to that effect be made by statute.

If, then, this was a felony, the prisoner at the bar could not be tried until the crime was established by the conviction of the person by whom it was actually perpetrated.

Is the law otherwise in this case, because in treason all are principals?

Let this question be answered by reason and by authority.

Why is it that in felonies, however atrocious, the trial of the accessary can never precede the conviction of the principal? Not because one is denominated the principal and the other the accessary; for that would be ground on which a great law principle could never stand. Not because there was in fact a difference in the degree of moral guilt; for in the case of murder committed by a hardy villain for a bribe, the person plotting the murder and giving the bribe is, perhaps, of the two, the blacker criminal; and, were it otherwise, this would furnish no argument for precedence in trial.

What, then, is the reason?

It has been already given. The legal guilt of the accessary depends on the guilt of the principal; and the guilt of the principal can only be established in a prosecution against himself.

Does not this reason apply in full force to a case of treason?

The legal guilt of the person who planned the assemblage on Blannerhasset's island depends, not simply on the criminality of the previous conspiracy, but on the criminality of that assemblage. If those who perpetrated the fact be not traitors, he who advised the fact cannot be a traitor. His guilt, then, in contemplation of law, depends on theirs; and their guilt can only be established in a prosecution against themselves. Whether the adviser of this assemblage be punishable with death, as a principal or as an accessary, his liability to punishment depends on the degree of guilt attached to an act which has been perpetrated by others, and which, if it be a criminal act, renders them guilty also. His guilt, therefore, depends on theirs; and their guilt cannot be legally established in the prosecution against him.

The whole reason of the law, then, relative to the principal and accessary, so far as respects the order of trial, seems to apply in full force to a case of treason committed by one body of men in conspiracy with others who are absent.

If from reason we pass to authority, we find it laid down by Hale, Foster, and East, in the most explicit terms, that the conviction of some one who has committed the treason must precede the trial of him who has advised or procured it. This position is also maintained by Leach in his notes on Hawkins; and is not, so far as the court has discovered, anywhere contradicted.

These authorities have been read and commented on at such length, that it cannot be necessary for the court to bring them again into view. It is the less necessary, because it is not understood that the law is controverted by the counsel for the United States.

It is, however, contended, that the prisoner has waived his right to demand the conviction of some one person who was present at the fact, by pleading to his indictment.

Had this indictment even charged the prisoner, according to the truth of the case, the court would feel some difficulty in deciding that he had, by implication, waived his right to demand a species of testimony essential to his conviction. The court is not prepared to say that the act which is to operate against his rights did not require that it should be performed with a full knowledge of its operation. It would seem consonant to the usual course of proceeding in other respects in criminal cases, that the prisoner should be informed that he had a right to refuse to be tried until some person who committed the act should be convicted, and that he ought not to be considered as waiving the right to demand the record of conviction, unless, with the full knowledge of that right, he consented to be tried. The court, however, does not decide what the law would be in such a case; it is unnecessary to decide it; because pleading to an indictment in which a man is charged as having committed an act, cannot be construed to waive a right which he would have possessed, had he been charged with having advised the act. No person indicted as principal can be expected to say I am not a principal, I am an accessary; I did not commit, I only advised the act.

The authority of the English cases on this subject depends, in a great measure, on the adoption of the common law doctrine of accessorial treasons. If that doctrine be excluded, this branch of it may not be directly applicable to treasons committed within the United States. If the crime of advising or procuring a levying of war be within the Constitutional definition of treason, then he who advises or procures it, must be indicted on the very fact, and the question whether the treasonableness of the act may be decided, in the first instance, in the trial of him who procured it, or must be decided in the trial of one who committed it, will depend upon the reason, as it respects the law of evidence, which produced the British decisions with regard to the trial of principal and accessary, rather than on the positive authority of those decisions.

This question is not essential in the present case; because, if the crime be within the Constitutional definition, it is an overt act of levying war, and, to produce a conviction, ought to have been charged in the indictment.

The law of the case being thus far settled, what ought to be the decision of the court on the present motion? Ought the court to sit and hear testimony which cannot affect the prisoner, or ought the court to arrest that testimony? On this question much has been said—much that may, perhaps, be ascribed to a misconception of the point really under consideration. The motion has been treated as a motion confessedly made to stop relevant testimony, and, in the course of the argument, it has been repeatedly stated, by those who oppose the motion, that irrelevant testimony may and ought to be stopped. That this statement is perfectly correct, is one of those fundamental principles in judicial proceedings which is acknowledged by all, and is founded in the absolute necessity of the thing. No person will contend that, in a civil or criminal case, either party is at liberty to introduce what testimony he pleases, legal or illegal, and to consume the whole term in details of facts unconnected with the particular case. Some tribunal, then, must decide on the admissibility of testimony. The parties cannot constitute this tribunal, for they do not agree. The jury cannot constitute it, for the question is, whether they shall hear the testimony or not. Who, then, but the court can constitute it? It is, of necessity, the peculiar province of the court to judge of the admissibility of testimony. If the court admit improper or reject proper testimony, it is an error of judgment, but it is an error committed in the direct exercise of their judicial functions.

The present indictment charges the prisoner with levying war against the United States, and alleges an overt act of levying war. That overt act must be proved according to the mandates of the Constitution of the act of Congress, by two witnesses. It is not proved by a single witness. The presence of the accused has been stated to be an essential component part of the overt act in this indictment, unless the common law principle respecting accessaries should render it unnecessary; and there is not only no witness who has proved his actual or legal presence, but the fact of his absence is not controverted. The counsel for the prosecution offer to give in evidence subsequent transactions at a different place and in a different State, in order to prove—what? The overt act laid in the indictment? That the prisoner was one of those who assembled at Blannerhasset's island? No; that is not alleged. It is well known that such testimony is not competent to establish such a fact. The Constitution and law require that the fact should be established by two witnesses; not by the establishment of other facts, from which the jury might reason to this fact. The testimony, then, is not relevant. If it can be introduced, it is only in the character of corroborative or confirmatory testimony, after the overt act has been proved by two witnesses in such manner that the question of fact ought to be left with the jury. The conclusion that, in this state of things, no testimony can be admissible, is so inevitable that the counsel for the United States could not resist it. I do not understand them to deny that, if the overt act be not proved by two witnesses, so as to be submitted to the jury, all other testimony must be irrelevant, because no other testimony can prove the act. Now, an assemblage on Blannerhasset's island is proved by the requisite number of witnesses, and the court might submit it to the jury whether that assemblage amounted to a levying of war; but the presence of the accused at that assemblage being no where alleged, except in the indictment, the overt act is not proved by a single witness, and, of consequence, all other testimony must be irrelevant.

The only difference between this motion, as made, and the motion, in the form which the coun-

sel for the United States would admit to be regular, is this: It is now general for the rejection of all testimony. It might be particular with respect to each witness as adduced; but can this be wished, or can it be deemed necessary? If enough is proved to show that the indictment cannot be supported, and that no testimony, unless it be of that description which the attorney for the United States declares himself not to possess, can be relevant, why should a question be taken on each witness?

The opinion of this court, on the order of testimony, has frequently been adverted to as deciding this question against the motion.

If a contradiction between the two opinions does exist, the court cannot perceive it. It was said that levying war is an act compounded of law and fact, of which the jury, aided by the court, must judge. To that declaration the court still adheres.

It was said that, if the overt act was not proved by two witnesses, no testimony, in its nature corroborative or confirmatory, was admissible, or could be relevant.

From that declaration there is certainly no departure. It has been asked, in allusion to the present case, if a general, commanding an army, should detach troops for a distant service, would the men composing that detachment be traitors, and would the commander-in-chief escape punishment?

Let the opinion which has been given answer this question. Appearing at the head of an army would, according to this opinion, be an overt act of leying war; detaching a military corps from it for military purposes might also be an overt act for levying war. It is not pretended that he would not be punishable for these acts; it is only said that he may be tried and convicted on his own acts, in the State where those acts were committed, not on the acts of others, in the State where those others acted.

Much has been said, in the course of the argument, on points on which the court feels no inclination to comment particularly, but which may, perhaps, not improperly, receive some notice.

That this court dares not usurp power is most true.

That this court dares not shrink from its duty is not less true.

No man is desirous of placing himself in a disagreeable situation. No man is desirous of becoming the peculiar subject of calumny. No man, might he let the bitter cup pass from him without self-reproach, would drain it to the bottom. But if he has no choice in the case, if there is no alternative presented to him but a dereliction of duty, or the opprobium of those who are denominated the world, he merits the contempt, as well as the indignation, of his country, who can hesitate which to embrace.

That gentlemen, in a case the utmost interesting, in the zeal with which they advocate particular opinions, and under the conviction, in some measure, produced by that zeal, should, on each side, press their arguments too far, should be impatient at any deliberation in the court, and should suspect or fear the operation of motives to which alone they can ascribe that deliberation, is, perhaps, a frailty incident to human nature; but, if any conduct on the part of the court could warrant a sentiment that they would deviate to the one side or the other from the line prescribed by duty and by law, that conduct would be viewed by the judges themselves with an eye of extreme severity, and would long be recollected with deep and serious regret.

The arguments on both sides have been intently and deliberately considered. Those which could not be noticed, (since to notice every argument and authority would swell this opinion to a volume,) have not been disregarded. The result of the whole is a conviction as complete as the mind of the court is capable of receiving on a complex subject, that the motion must prevail.

No testimony relative to the conduct or declarations of the prisoner elsewhere and subsequent to the transaction on Blannerhasset's island can be admitted, because such testimony, being in its nature merely corroborative, and incompetent to prove the overt act in itself, is irrelevant until there be proof of the overt act by two witnesses.

This opinion does not comprehend the proof by two witnesses that the meeting on Blannerhasset's island was procured by the prisoner. On that point the court, for the present, withholds its opinion, for reasons which have been already assigned; and as it is understood from the statements made on the part of the prosecution that no such testimony exists. If there be such, let it be offered, and the court will decide upon it.

The jury have now heard the opinion of the court on the law of the case. They will apply that law to the facts, and will find a verdict of guilty or not guilty, as their own consciences may direct.

Opinion of the court on the proper process to be employed for bringing Aaron Burr before the court to answer the indictment for the misdemeanor. Delivered by the Chief Justice on Thursday, September 8.

The question now before the court is, whether bail be demandable from a person actually in custody, against whom an indictment for a misdemeanor has been found by a grand jury. As conducing directly to a decision of this point, the question has been discussed, whether a summons or a *capias* would be the proper process to bring the accused in to answer the indictment, if, in a point of fact, he was not before the court.

It seems to be the established practice of Virginia in such cases, to issue a summons in the first instance; and, if by any act of Congress the laws of the several States are adopted as the rules by which the courts of the United States are to be governed in criminal prosecutions, the question is at an end; for I should admit the settled practice of the State courts as the sound construction of the State law under which that practice has prevailed.

The thirty-fourth section of the judicial act, it is contended, has made this adoption.

The words of that section are: "That the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply."

It might certainly well be doubted, whether this section, if it should be construed to extend to all the proceedings in a case where a reference can be made to the State laws for a rule of decision at the trial, can comprehend a case where, at the trial in chief, no such reference can be made. Now, in criminal cases, the laws of the United States constitute the sole rule of decision; and no man can be condemned or prosecuted in the federal courts on a State law. The laws of the several States, therefore, cannot be regarded as rules of decision in trials for offences against the United States. It would seem to me, too, that the technical term, "trials at common law," used in the section, is not correctly applicable to prosecutions for crimes. I have always conceived them to be, in this section, applied to civil suits, as contradistinguished from criminal prosecutions, as well as to suits at common law as contradistinguished from those which come before the court sitting as a court of equity or admiralty.

The provision of this section would seem to be inapplicable to original process for another reason. The case is otherwise provided for by an act of Congress. The fourteenth section of the judicial act empowers the courts of the United States "to issue all writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law."

This section, seems to me, to give this court power to devise the process for bringing any person before it, who has committed an offence of which it has cognizance, and not to refer it to the State law for that process. The limitation on this power is, that the process shall be agreeable to the principles and usages of law. By which I understand those general principles and those general usages which are to be found, not in the legislative acts of any particular State, but in that generally recognised and long established law, which forms the substratum of the laws of every State.

Upon general principles of law, it would seem to me that, in all cases where the judgment is to affect the person, the person ought to be held subject to that judgment. Thus, in civil actions, where the body may be taken in execution to satisfy the judgment, bail may be demanded. If the right of the plaintiff is supported by very strong probability, as in debt upon a specialty, bail is demandable without the intervention of a judge. If there be no such clear evidence of the debt, bail is often required upon the affidavit of the party. Now, reasoning by analogy from civil suits to criminal prosecutions, it would seem not unreasonable where there is such evidence as an indictment found by a grand jury, to use such process as will hold the person of the accused within the power of the court, or furnish security that the person will be brought forward to satisfy the judgment of the court.

Yet the course of the common law appears originally to have been otherwise. It appears, from Hawkins, that the practice of the English courts was to issue a *venire facias* in the first instance, on an indictment for a misdemeanor. This practice, however, is stated by Blackstone to have been changed. He says, (vol. 4, p. 319,) "And so in the case of misdemeanors, it is now the usual practice for any judge of the court of King's Bench, upon certificate of an indictment found, to award a writ of *capias* immediately, in order to bring in the defendant."

It is, then, the English construction of the common law, that although in the inferior courts the *venire facias* might be the usual course, and although it had prevailed, yet, that a judge of the King's Bench might issue a capias in the first instance.

This subject has always appeared to me, to be in a great measure governed by the thirty-third section of the judicial act. That section provides that, for any crime or offence against the United States, the offender may, agreeably to the usual mode of process against offenders in that State where he is found, be arrested, and imprisoned or bailed, as the case may be.

This act contemplates an arrest, not a summons; and this arrest is to be not solely for offences for which the State laws authorize an arrest, but "for any crime or offence against the United States." I do not understand the reference to the State law respecting the mode of process as overruling the preceding general words, and limiting the power of arrest to cases in which, according to the State laws, a person might be arrested, but simply as prescribing the mode to be pursued. Wherever, by the laws of the United States, an offender is to be arrested, the process of arrest employed in the State shall be pursued; but an arrest is positively enjoined for any offence against the United States. This construction is confirmed by the succeeding words: "The offender shall be imprisoned or bailed, as the case may be." There exists no power to direct the offender, or to bind him, without bail, to appear before the court, which would certainly have been allowed, had the act contemplated a proceeding in such a case which should leave the person at large without security. But he is absolutely to be imprisoned, or bailed, as the case may be.

In a subsequent part of the same section, it is enacted "that, upon all arrests in criminal cases, bail shall be admitted, except where the punishment may be death."

There is no provision for leaving the person at large without bail, and I have ever construed this section to impose it as a duty on the magistrate, who proceeds against any offender against the United States, to commit or bail him. I perceive in the law no other course to be pursued.

This section, it is true, does not respect the process upon an indictment. But the law would be inconsistent with itself if it required a magistrate to arrest for any offence against the United

States; if it commanded him on every arrest to commit or to bail, and yet refused a *capias*, and permitted the same offender to go at large so soon as an indictment was found against him. This section, therefore, appears to me to be entitled to great influence in determining the court on the mode of exercising the power given by the fourteenth section in relation to process.

On the impeachment which has been mentioned, this point was particularly committed to Mr. Lee, and the law upon it was fully demonstrated by him.

The only difficulty I ever felt on this question was produced by the former decisions of Judge Iredell. If the State practice on this subject had been adopted, I should have felt myself bound by that adoption. But I do not consider the State practice as adopted; Mundell's case was a civil suit, and the decision was that the State rule respecting bail in civil actions must prevail. Sinclair's case was indeed a case similar to this, and in Sinclair's case a *venire facias* was issued. But I am informed by the clerk that this was his act, at the instance of the attorney, not the act of the court. The point was not brought before the court.

In Callender's case a *capias*, or, what is the same thing, a bench warrant, was issued. This was the act of the court; but, not having been an act on argument, or with a view of the whole law of the case, and of former decisions, I should not have considered it as overruling those decisions, if such existed. But there has been no decision expressly adopting the State practice, and the decision in Callender's case appears to me to be correct.

I think the *capias* the more proper process. It is conformable to the practice of England at the time of our revolution, and is, I think, in conformity with the spirit of the 33d section of the judicial act. I shall, therefore, adopt it.

To issue the *capias* to take into custody a person actually in custody would be an idle ceremony. In such a case the order of the court very properly supplies the place of a *capias*. The only difference between proceeding by *capias*, and by order, which I can perceive, would be produced by making the writ returnable to the next term.

Opinion delivered on Monday, September 14, 1807, *on the motion for exclusion of evidence on the trial of Aaron Burr for a misdemeanor.*

The present motion is particularly directed against the admission of the testimony of Neale, who is offered for the purpose of proving certain conversations between himself and Herman Blannerhasset. It is objected that the declarations of Herman Blannerhasset are, at this time, inadmissible on this indictment.

The rule of evidence which rejects mere hearsay testimony, which excludes from trials of a criminal or civil nature the declarations of any other individual than of him against whom the proceedings are instituted, has been generally deemed all essential to the correct administration of justice. I know not why a declaration in court should be unavailing, unless made upon oath, if a declaration out of court was to criminate others than him who made it; nor why a man should have a Constitutional claim to be confronted with the witnesses against him, if mere verbal declarations, made in his absence, may be evidence against him. I know of no principle, in the preservation of which all are more concerned; I know none, by undermining which, life, liberty, and property, might be more endangered. It is, therefore, incumbent on courts to be watchful of every inroad on a principle so truly important.

This rule, as a general rule, is permitted to stand; but some exceptions to it have been introduced concerning the extent, of which a difference of opinion prevails, and that difference produces the present question.

The first exception is, that in cases of conspiracy, the acts, and it is said by some the declarations, of all the conspirators may be given in evidence on the trial of any one of them, for the purpose of proving the conspiracy; and this case, it is alleged, comes within the exception.

With regard to this exception a distinction is taken in the books between the admissibility and operation of testimony which is clear in point of law, but not at all times easy to practise in fact. It is, that although this testimony be admitted, it is not to operate against the accused unless brought home to him by testimony drawn from his own declarations or his own conduct.

But the question to be considered is, does the exception comprehend this case? Is this a case of conspiracy, according to the well established law meaning of the term?

Cases of conspiracy may be of two descriptions:

1st. Where the conspiracy is the crime, in which case the crime is complete although the act should never be formed; and in such cases, if several be indicted, and all except one be acquitted, that one cannot, say the books, be convicted, because he cannot conspire alone.

2d. Where the crime consists in the intention, and is proved by a conspiracy, so that the conviction of the accused may take place upon evidence that he has conspired to do any act which manifests the wicked intention.

In both these cases an act is not essential to the completion of the crime, and a conspiracy is charged in the indictment as the ground of accusation. If the conspiracy be the sole charge, as it may be, the question to be decided is not whether the accused has committed any particular fact, but whether he has conspired to commit it. Evidence of conspiracy, in such a case, goes directly to support the issue. It has, therefore, been determined that the nature of the conspiracy may be proven by the transactions of any one of the conspirators in furtherance of the common design; the degree of guilt, however, of the particular conspirator upon trial must still depend on his own particular conduct.

In the case at bar the crime consists not in intention, but in acts. The act of Congress does not extend to the secret design, if not carried into open deed, nor to any conspiracy, however extensive, if it do not amount to a beginning or setting on foot a military expedition. The indictment contains no allusion to a conspiracy, and, of consequence, the issue to be tried by the jury is not whether any conspiracy has taken place, but whether the particular facts charged in the indictment have been committed.

I do not mean to admit that, by any course which might have been given to the prosecution, this could have been converted into a case of conspiracy; but most assuredly if it was intended to prove a conspiracy, and to let in that kind of testimony which is admissible only in such a case, the indictment ought to have charged it.

I have not been able to find in the books a single decision or a solitary dictum which would countenance the attempt that is now made to introduce as testimony the declarations of third persons, made in the absence of the person on trial, under the idea of a conspiracy, where no conspiracy is alleged in the indictment. The researches of the counsel for the prosecution have not been more successful; but they suppose this case, though not within the letter, to come clearly within the reasoning of those cases where this testimony has been allowed.

It has been said that, wherever the crime may be committed by a single individual, although in point of fact more than one should be concerned in it, as in all cases of felony, the prosecution must be conducted in the usual mode, and the declarations of third persons cannot be introduced at a trial; but whenever the crime requires more than one person, where, from its nature, it cannot be committed by a single individual, although it shall not consist in conspiracy, but in open deed, yet it is the nature of a conspiracy, and evidence of the declarations and acts of third persons, connected with the accused, may be received, whether the indictment cover such testimony or not.

I must confess that I do not feel the force of this distinction. I cannot conceive why, when numbers do in truth conspire to commit an act, as murder or robbery, the rule should be that the declaration of one of them is no evidence against another; and yet, if the act should require more than one for its commission, that the declarations of one person engaged in the plot would immediately become evidence against another. I cannot perceive the reason of this distinction; but, admitting its solidity, I know not on what ground to dispense with charging in the indictment the combination intended to be proved. If this combination may be proved by the acts or declarations of third persons, made in the absence of the accused, because he is connected with those persons; if, in consequence of this connexion, the ordinary rules of evidence are to be prostrated, it would seem to me that the indictment ought to give some notice of this connexion.

When the terms in the indictment necessarily imply a combination, it will be admitted that a combination is charged, and may be proved. And when A, B, and C, are indicted for murdering D, yet, in such a case, the declarations of one of the parties, made in the absence of the others, have never been admitted as evidence against the others. If, then, this indictment should even imply that the fact charged was committed by more than one person, I cannot conceive that the declaration of a *particeps criminis* would become admissible on the trial of a person not present when they were made, unless those declarations form a part of the very transaction charged in the indictment.

If in all this I should be mistaken, yet it remains to be proved that the offence charged may not be committed by a single individual. This may, in some measure, depend on the exposition of the terms of the act; and it is to be observed that this exposition must be fixed. It cannot vary with the varying aspect of the prosecution at its different stages. If, as has been said, a military expedition is begun or set on foot, when a single soldier is enlisted for the purpose, then unless it be begun as well by the soldier who enlists as by the officer who enlists him, a military expedition may be begun by a single individual. So, if those who engage in the enterprise follow their leader from their confidence in him, without any knowledge of the real object, there is no conspiracy, and the criminal act is the act of an individual. So, too, if *the* means are *any* means, the crime may unquestionably be committed by an individual. Should the term be even so construed as to imply that all the means must be provided before the offence can be committed, still all the means may, in many cases, be provided by a single individual. The rule, then, laid down by the counsel for the prosecution, if correct in itself, would not comprehend this case.

2dly. There are also cases in the books where acts are in their nature joint, and where the law attaches the guilt to all concerned in their commission, so that the act of one is in truth the act of others; where the conduct of one person in the commission of the fact constitutes the crime of another person; but this is distinct from conspiracy.

If many persons combine to commit a murder, and all assist in it, and are actually or constructively present, the act of one is the act of all, and is sufficient for the conviction of all.

So in acts of levying war, as in the cases of Damane and Purchase, the acts of the mob were the acts of all in the mob whose conduct showed a concurrence in those acts, and in the general design which the mob were carrying into execution. But these decisions turn on a distinct principle from conspiracy. The crime is a joint crime, and all those who are present, aiding in the commission of it, participate in each other's action, and in the guilt attached to those actions. The conduct of each contributes to show the nature of this joint crime; and declarations made during the transaction are explanatory of that transaction; but I cannot conceive that, in either

case, declarations, unconnected with the transaction, would have been evidence against any other than the person who made them, or persons in whose presence they were made. If, for example, one of several men who had united in committing a murder, should have said that he, with others, contemplated the fact which was afterwards committed, I know of no case which would warrant the admission of this testimony upon the trial of a person who was not present when the words were spoken. So if Damane had previously declared that he had entered into a confederacy for the purpose of pulling down all meeting-houses, I cannot believe that this testimony would have been admissible against a person having no knowledge of the declaration, and giving no assent to it.

In felony, the guilt of the principal attaches to the accessary, and, therefore, the guilt of the principal is proven on the trial of the accessary. In treason, all are principals, and the guilt of him who has actually committed the treason does, in England, attach to him who has advised, aided, or assisted that treason; consequently, the conduct of the person who has perpetrated the fact must be examined on the trial of him who has advised or procured it. But, in misdemeanors by statute, where the commission of a particular fact constitutes the only crime punished by the law, I believe there is no case where the declaration of a *particeps criminis* can affect any but himself.

3dly. The admission of the declarations of Mr. Blannerhasset may be insisted upon under the idea that he was the agent of Colonel Burr. How far the acts of one man may affect another criminally, is a subject for distinct consideration; but I believe there is no case where the words of an agent can be evidence against his principal on a criminal prosecution. Could such testimony be admissible, the agency must be first clearly established, not by the words of the agent alone, but by the acts of the principal, and the word must be within the power previously shown to have been given.

The opinions of the circuit court of New York in trials of Smith and Ogden have been frequently mentioned. Although I have not the honor to know the judge who gave those decisions, I consider them as the determination of a court of the United States, and I shall not be lightly induced to disregard them, or unnecessarily to treat them with disrespect. I do not, however, perceive in the opinions of Judge Talmadge any expression indicating that the declarations of third persons could be received as testimony against any individual who was prosecuted under this act. If he has given that opinion, it has certainly escaped my notice, and has not been suggested to me by counsel. He unquestionably says, in page 113 of the trial, "that the reference which was made to the doctrine of conspiracy did not apply in that case." The reference alluded to was the observation of Mr. Emmet, who had said "that if the object was to charge Colonel Smith with the acts of Captain Lewis, they ought to have laid the indictment for a conspiracy." The opinion of the judge, that the doctrine of conspiracy had no application to the case, appears to me to be perfectly correct.

I feel, therefore, no difficulty in deciding that the testimony of Mr. Neale, unless he can go further than merely stating the declarations made to him by Blannerhasset, is at present inadmissible.

But the argument has taken a much wider range. The points made comprehend the exclusion of other testimony suggested by the attorney for the United States, and the opinion of the court upon the operation of testimony. As these subjects are entirely distinct, and as the object of the motion is the exclusion of testimony supposed to be illegal, I shall confine my observations to that part of the argument which respects the admissibility of evidence of the description of that proposed by the attorney for the United States.

The indictment charges the accused in separate counts with beginning, with setting on foot, with preparing, and with providing the means for a military expedition to be carried on against a nation at peace with the United States. Any legal testimony which applies to any one of these counts is relevant. That which applies to none of them must be irrelevant.

The expedition, the character and object of that expedition, that the defendant began it, that he set it on foot, that he provided and prepared the means for carrying it on, are all charged in the indictment, and, consequently, these charges may be all supported by any legal testimony. But that a military expedition was begun and set on foot by others, or that the means were prepared or provided by others, is not charged in this indictment, is not a crime which is or can be alleged against the defendant, and testimony to that effect is therefore not relevant.

All testimony which serves to show the expedition to have been military in its character, as, for instance, testimony respecting their arms and provisions, no matter by whom purchased, their conduct, no matter by whom directed, or who was present, all legal testimony which serves to show the object of the expedition, as would be their actually marching against Mexico, any public declarations made among themselves stating Mexico as their object, any manifesto to this effect, any agreement entered into by them for such an expedition—these, or similar acts, would be received to show the object of the expedition.

In the trials of Smith and Ogden they were received. Whether the particular acts of the accused, on which his guilt or innocence depends, must precede this species of testimony, or may be preceded by it, is a question which merely respects the order of evidence. There can be no doubt that at some stage of the prosecution either before or after the particular part performed by the accused has been shown, the character and object of the expedition may be shown, and that by any legal testimony calculated to develop that character and object. Whether this testimony is admissible before the proof which particularly applies to the part performed by the accused, or

ought to be introduced by first proving that part, is a question which is not made in this case, and which was not made in the case of Smith and Ogden. In that case it was certainly entirely unimportant, and it is probably not less so in this.

It has been also contended that the acts no more than the declarations of third persons can be given in evidence on this indictment.

It has been already said that those acts of equipment which go to show the character of the expedition may be given in evidence. If, for example, Blannerhasset, Tyler, Smith, or any other persons, provided arms, ammunition, or provisions, which were applied to the armament, this would be evidence, because it would show the character of the expedition. This was done in the case of Smith and Ogden, without inquiring who provided the arms, for they belonged to the expedition. Captain Lewis, for instance, purchased several military equipments. It was not deemed necessary to show that Smith was connected with Lewis, for these purchases were made for the expedition, and Smith was not charged with providing them. He was charged with providing other means; and the means provided by Lewis served to show the character of the expedition.

But although the acts of all persons providing means applied to the expedition may be given in evidence, upon the same principle that the state of the expedition may be shown, it does not follow that other acts of third persons may be given in evidence.

It has also been contended that no transactions out of the district are testimony.

This position is correct to a considerable extent, but not to that extent in which it is laid down. A declaration of Mr. Burr, for example, made in Kentucky, or elsewhere, that he did set on foot a military expedition on Blannerhasset's island to be carried on against the dominions of the King of Spain, while the United States were at peace with that Power, would, I think, be evidence; so would the actual marching of the troops proved to be raised by him against the province of Mexico. Testimony which goes directly to prove the indictment may, I think, be drawn from any place.

But I do not understand this to be the point really in contest. I understand the counsel of the United States to insist, that providing means in Kentucky, that enlisting men in Kentucky, that joining the expedition in Kentucky, may be given in evidence to show that the accused did begin and set on foot the expedition in Blannerhasset's island, or did provide the means at that place, as charged in the indictment. This I understand to be the great question which divides the prosecution and defence.

It is, I believe a general rule, that in criminal prosecutions, a distinct crime for which a prosecution may be instituted cannot be given in evidence in order to render it more probable that the particular crime charged in the indictment was committed; if gentlemen think me wrong in this, I will certainly hear them upon the point, but I believe the position to be correct. Now providing the means for a military expedition in Kentucky, to be carried on against the dominions of a prince with whom the United States are at peace, is certainly in itself a distinct offence upon which an indictment may be as well supported as it can be for providing means for the same or a similar expedition in Virginia. According to the rule laid down, then, this testimony cannot be received unless it goes to prove directly the charges contained in the indictment. But how can it go directly to prove those charges? Does it follow that the man who has provided the means in Kentucky has also provided the means in Virginia? Certainly it does not follow; and, consequently, the acts alleged in Kentucky do not prove the charges contained in the indictment. They would prove the defendant to have been connected in the enterprise, and gentlemen argue as if they thought this sufficient for their purpose. I shall be excused if I employ a few moments in stating my reasons for thinking it not sufficient.

I have already said, and surely no man will deny it, that two distinct persons may at different places furnish different means for the same enterprise. It will, I presume, not be contended that one of them may be indicted for the means provided by the other. So, too, if the same man shall provide means for the same enterprise at different places, as in Virginia and Kentucky, I do not imagine that an indictment for providing arms in Virginia could be supported by proving that he provided ammunition in Kentucky. They are distinct offences, for either of which he may be punished; and the commission of the one may render more probable, but does not prove the commission of the other.

How, then, do gentlemen mean to make this testimony relevant? It is by making the acts of Blannerhasset, Tyler, and Smith, the acts of Burr; by insisting that their acts show an unlawful expedition to have been begun by him in Virginia, or that the means for that expedition were provided by him in Virginia. This being accomplished, his acts in Kentucky may be adduced to corroborate or confirm the testimony which discloses his conduct in Virginia.

As preliminary, then, to this testimony, such proof of the specific charges contained in the indictment may be given, as may be left to the consideration of the jury.

This proof relates to place as well as to fact. "Of whatsoever nature an offence indicted may be," (says Hawkins, b. 2, ch. 25, sec. 35,) "whether local or transitory, as seditious words or battery, &c. it seems to be agreed that if upon not guilty pleaded, it shall appear that it was committed in a county different from that in which the indictment was found, the defendant shall be acquitted."

This rule is stronger in the United States, where it is affirmed by the Constitution itself, and where the jurisdiction of the court is limited to offences within the district. Its obligation, therefore, is complete.

If there be any direct testimony that an expedition was begun, or set on foot, or that the means

were provided or prepared in Virginia, that testimony has not yet been heard, so far as I recollect. If there be such testimony, it must also be shown that the expedition was begun, or that the means were prepared by the accused. No single act of his in Virginia has been offered in evidence. He made a contract in the State of Ohio for boats and provisions, which may have been intended as a part of the expedition, but no contract appears to have been made in Virginia, nor were the boats constructed or provisions procured in Virginia. How, then, is it to appear that he begun or set on foot a military expedition in Virginia, or that he provided or prepared the means for such an expedition?

It is said that if he gave orders from Kentucky or elsewhere, and in consequence of those orders the means were provided in Virginia, the accused is within the letter of the act as well as its spirit, and has himself provided the means in Virginia.

If these orders were in proof, the court as well as the counsel would be enabled to view the subject with more accuracy, and to treat it with more precision. Since those orders are not adduced nor accurately stated, and the question has been argued without them, the court must decline giving any opinion, or consider the orders as offered, and say what orders would be admissible and what inadmissible. The latter course may save the bar the trouble of another argument.

To whom are orders supposed to have been given, and who are supposed to have executed them?

They must have been given to accomplices, or to those who had no share in the expedition.

If accomplices, under the direction of Colonel Burr, have provided the means, can their liability to the penalties of the law be doubted? I presume not. If persons engaged in the expedition have provided the means for carrying it on, it will, I presume, be admitted that they are within the letter and the spirit of the act. Each man has himself provided and prepared those particular means which he has furnished. If Colonel Burr, as was the case with Colonel Smith, has supplied money for the expedition, then money may be charged as the means provided by him; but if that money was advanced to an accomplice, its investment in means for the expedition is the act of the accomplice, for which, being a free agent, he is himself responsible. The accomplice has committed the very act which the law furnishes. Has the accused, by suggesting or procuring that act, also committed it?

I will not say how far the rule that penal laws must be construed strictly, may be carried without incurring the censure of disregarding the sense of the Legislature. It may however, be safely affirmed that the offence must come clearly within the description of the law, according to the common understanding of the terms employed, or it is not punishable under the law. Now to do an act, or to advise or procure an act, or to be connected or leagued with one who does that act, is not the same, in either law language or in common parlance; and if they are not the same, a penalty affixed to the one is not necessarily affixed to the other. The penalty affixed to the act of providing the means for a military expedition is not affixed to the act of advising or procuring those means to be provided, or of being associated with the man who has provided them. The distinction made by the law between these persons is well settled, and has been too frequently urged to require further explanation. The one is a principal, the other an accessary. In all misdemeanors, punishable only by a statute which describes as the sole offender the person who commits the prohibited act, the one is within and the other not within the statute. In passing the act under consideration, Congress obviously contemplated this distinction. I presume that in a prosecution under the 3d section, for fitting out a privateer, it would not be alleged that a person who was concerned with the men who actually fitted out a privateer, but who performed no act himself, could be convicted on an indictment not for being concerned in fitting out the privateer, but for actually fitting her out. These are stated in that section as separate offences.

This distinction taken in the law is well understood, and cannot be considered as overlooked by those who frame penal acts. They cannot be considered as intending to describe one offender, when they describe another; and if experience suggests defects in the penal code, the Legislature exclusively judges how far those defects are to be remedied.

While expounding the terms of the act, it may not be improper to notice an argument advanced by the attorney for the United States, which was stopped by my observing that he had not correctly understood the opinion delivered in the case of treason. He understood that opinion as approving the doctrine laid down by Keeling and Hale, that an accessary before the fact might plead, in bar of an indictment as accessary, that he had been acquitted as principal; whence it was inferred, that on an indictment for doing an act, evidence of advising or producing that act might be received. I was certainly very far from approving this doctrine. On the contrary, I declared it to contradict every idea I had ever formed on the subject. But if it were correct, I endeavored to show that it could not affect that case. My disapprobation of the doctrine induced me to look further into it, and my persuasion that it is not law is confirmed. Hale, v. 2, p. 292, says, "if A and B be indicted of the murder of C, and upon their evidence it appears that A committed the fact, and B was not present, but was accessary before the fact, by commanding it, B shall be discharged."

In Hale, 2, ch. 85, sec. 11, Hawkins discusses this subject, shows in a note the contradiction in those authorities which maintain the doctrine, cites the opposing authorities, and obviously approves the opinion which is here given. It is apparent then, that the law never considers the commission and the procurement of an act, even where both are criminal, as the same act.

I cannot, therefore, consider means provided by

those who are his accomplices in the expedition, as means provided by Colonel Burr.

If the means were provided by order of the accused, by persons not accomplices, and not guilty under the act, the law may be otherwise. I shall not exclude such testimony. There is, however, some doubt whether the place of trial should be where the orders were given, or where they were executed.

At common law, if an act was procured or advised at one place, and executed at another, it was doubted whether the procurer could be tried at either place, because the offence was not complete at either. This difficulty was removed by a statute made in the reign of Edward VI. If there be testimony showing, by orders from the accused, that means were provided in Virginia by a person not an accomplice, it may be received, and the question respecting the scene of trial put in a way for final decision.

The question whether all the means must be provided before the offence described in the statute has been committed, relates to the effect rather than to the exclusion of the testimony. I shall certainly not reject any evidence which shows that any means *were provided by the accused in the place charged in the indictment.*

Upon the subject of beginning and setting on foot a military expedition or enterprise, it would be unnecessary at this time to say anything, were it not on account of the question respecting the introduction of testimony out of the district.

What is an expedition? What is an enterprise?

An expedition, if we consult Johnson, is "A march or voyage with martial intentions." In this sense it does not mean the body which marches, but the march itself. The term is, however, sometimes employed to designate the armament itself, as well as the movement of that armament.

An enterprise is "An undertaking of hazard—an arduous attempt." The proper meaning, then, of this word also describes the general undertaking, and not the armament with which that undertaking is to be accomplished.

The first count in the indictment charges that Burr began the expedition in Blannerhasset's island; the second and third, that he set on foot the enterprise in Blannerhasset's island.

If the term *expedition* is to be taken in its common and direct sense—that is, to mean a march or a voyage with martial intentions—it began where that march or voyage begun; and it must have been begun by the accused to bring him within the act.

If the term be taken in its figurative sense, to designate the armament itself, instead of the movements of that armament, then I cannot readily conceive an act which begins an expedition, unless the same act may also be said to provide the means of an expedition. The formation of the plan in the mind is not the commencement of the expedition within the act. Our laws punish no mental crimes not brought into open deed. The disclosure of that plan does not begin it. If it did, the first disclosure would be the beginning. I find a difficulty in conceiving any act which amounts to beginning an expedition, which does not also amount to providing the means for an expedition. However, if there can be such an act, and if it has been committed in Virginia, it may certainly be given in evidence.

The same observations apply to setting on foot an enterprise.

These remarks are made to show what it will be necessary to prove, in order to let in corroborative proof.

It is, then, the opinion of the court, that the declarations of third persons, not forming a part of the transaction, and not made in the presence of the accused, cannot be received in evidence in this case.

That the acts of accomplices, except so far as they prove the character or object of the expedition, cannot be given in evidence.

That the acts of the accused in a different district, which constitute in themselves substantive cause for a prosecution, cannot be given in evidence, unless they go directly to prove the charges laid in the indictment.

That any legal testimony which shows the expedition to be military, or to have been designed against the dominions of Spain, may be received.

That any testimony showing that the accused performed within the district any one of the acts charged in the indictment may be received.

Gentlemen will know how to apply these principles. Should any difficulty occur in applying them, the particular case will be brought before the court and decided.

City of Richmond, *sct.:*

This day, the 28th of October, 1807, Thomas Ritchie, editor of the Enquirer, published in this city, made oath before me, a magistrate of the said city, that the annexed sheet, containing the opinion of the circuit court of the United States for the fifth circuit and Virginia district, in the case of Aaron Burr, &c., &c., was printed in the Enquirer from the original manuscript furnished by Chief Justice Marshall.

Given under my hand, the day and year above written. WM. RICHARDSON, *Mayor.*

Conclusive Opinion of the Chief Justice Marshall, on the motion for commitment, delivered on Tuesday, October 20, 1807.

Much of the difficulty of the present case arises from its being attended by circumstances entirely opposite to those which are usually found in motions of a similar description.

An examining magistrate commits, and ought to commit, on probable cause. In defining his duty, after stating that he may arrest, either upon his own suspicion or that of others, Blackstone adds: "But in both cases it is fitting to examine upon oath the party requiring a warrant, as well to ascertain that there is a felony or other crime actually committed, (without which no warrant should be granted,) as also to prove the cause and probability of suspecting the party against whom the warrant is prayed."

But, although the existence of a fact as the foundation of a charge must be proved before a magistrate can legally imprison a citizen, it is not believed to be true that the same necessity exists for ascertaining with equal clearness the full legal character of that fact, or the degree of guilt which the law attaches to it. On a charge of murder, for example, the homicide must be proved; but the inquiry whether it be justifiable or otherwise is seldom made by an examining magistrate. He could not refuse to commit, unless it was perfectly clear that the act was innocent. An opinion that a jury ought to acquit would not warrant a refusal on his part to take the steps which might bring the accused before a jury.

In cases where the legal effect of the act alleged to be criminal is in any degree doubtful, it would greatly derange the regular course of justice, and enable many offenders to escape, should a magistrate refuse to arrest until he had received full proof of guilt. If the fact be of such a character as perhaps to be construed into a high and dangerous crime, with the aid of other testimony, which the nature of the case admits, it would seem to be a duty to secure the person, in order to abide the judgment of the law.

Among the many reasons which may be enumerated for committing in a doubtful case, are:

1. That, upon a considerable portion of a criminal charge, it is the peculiar province of a jury to decide;

2. That additional testimony is to be expected; and,

3. That the person most commonly making the commitment is a justice of the peace, not authorized finally to try the offender, and who, consequently, whatever may be the fact, is not presumed to be so competent a judge of the law of the case as he is to whom the power of deciding it is confided.

Had these proceedings commenced with the present motion, founded on testimony such as is now adduced, I certainly should have felt no difficulty in deciding on it. But the proceedings are not now commencing. The persons against whom this motion is made have been seized—one in the Mississippi Territory, one in Kentucky, and one in the western parts of Pennsylvania or New York, and brought to this place for trial. An immense number of witnesses have been assembled, and a very extensive investigation of the transactions alleged to be criminal has taken place. The result has been the acquittal of one of the accused, upon the principle that the offence, if committed anywhere, was committed out of the jurisdiction of this court; and a *nolle prosequi* has been entered with respect to the others. The witnesses intended to establish the charge before a jury have been examined, and the probability of obtaining testimony which can materially vary the case is admitted to be very remote. The great personal and pecuniary sufferings already sustained must be allowed also to furnish some motives for requiring rather stronger testimony to transmit the accused to a distant State for trial, than would be required in the first instance. It may likewise be added, as a consideration of some weight, that the judge who hears the motion, though sitting as an examining magistrate, is one of those who is by law intrusted with the power of deciding finally on the case; and there seems to be, on that account, the less reason for referring the party to a distinct tribunal, on a point on which a slight doubt may exist.

I do not believe that in England, whence our legal system is derived, a justice of *assize* and *nisi prius*, after hearing the whole testimony, would commit for trial in another county a man who had been tried in an improper county, unless the probable cause was much stronger than would be required on ordinary occasions.

These conflicting considerations certainly render the questions to be decided more intricate than they would be in a different state of things. After weighing them, I have conceived it to be my duty not to commit on slight ground; but at the same time I cannot permit myself to be governed by the rules which would regulate my conduct on a trial in chief.

There are certain principles attached to the different characters of a judge sitting as an examining magistrate, and on a trial in chief, which must essentially influence his conduct even under circumstances like those which attend the present case. It is a maxim, universal in theory, though sometimes neglected in practice, that if, in criminal prosecutions, there be doubts either as to fact or law, the decision ought to be in favor of the accused. This principle must be reversed on a question of commitment. In a case like the present, if the judge has formed a clear opinion on the law or fact, which there is not much reason to suppose additional testimony might be obtained to change, it would be injustice to the public, to the accused, and to that host of witnesses who must be drawn from their private avocations to the trial, should he take a step which, in his judgment, could produce only vexation and expense; but if he entertains serious doubts as to the law or fact, it is, I think, his duty, even in a case like this, not to discharge, but to commit.

The charges against the accused are:

1st. That they have levied war against the United States at the mouth of Cumberland river, in Kentucky; and,

2d. That they have begun and provided the means for a military expedition against a nation with which the United States were at peace.

With respect to one of the accused, a preliminary defence is made in the nature of a plea of *autrefois acquit*.

If the question raised by this defence was one on which my judgment was completely formed in favor of the person by whom it is made, it would certainly be improper for me to commit him; but if my judgment is not absolutely and decidedly formed upon it, there would be a manifest impropriety in undertaking now to determine it. This does not arise from any fear to meet a great question whenever my situation shall require me to meet it, but from a belief that I ought as well to avoid the intrusion of my opinions on

my brethren in cases where duty does not enjoin it on me to give them, as the withholding of these opinions where my situation may demand them. The question whether *autrefois acquit* will be a good plea in this case is of great magnitude, and ought to be settled by the united wisdom of all the judges. Were it brought before me on a trial in chief, I would, if in my power, carry it before the Supreme Court; when brought before me, merely as an examining magistrate, I should deem myself inexcusable were I to decide, while a single doubt remained respecting the correctness of that decision.

To settle new and important questions in our criminal code, especially where those questions are Constitutional, is a task upon which a single judge will at any time enter with reluctance; certainly, he would not willingly engage in it while acting as an examining magistrate. There is a decent fitness which all must feel in bringing such questions, if practicable, before all the judges. In England, trials which are expected to involve questions of great magnitude, are seldom assigned to one or two judges. At that interesting crisis, when Hardy, Tooke, Thelwall, and others, were indicted for treason, Chief Justice Eyre was aided and supported by four associate judges, of high talents and character. It would, I have no doubt, in that country be a matter of surprise if any person, whatever might be his station in the judiciary, should undertake to settle a great and novel point on a question of commitment. Although, in the United States, our system does not admit of a commission authorizing a majority of the judges to constitute a court for the trial of special criminal cases, yet it does not admit of carrying a doubtful and important point before the Supreme Court, and I should not feel myself justified were I now to give an opinion anticipating such a measure.

I shall, therefore, consider this motion as if no verdict had been rendered for either of the parties.

Both charges are supported by the same transaction and the same testimony. The assemblage at the mouth of Cumberland is considered as an act of levying war against the United States, and as a military armament collected for the invasion of a neighboring Power with whom the United States were at peace.

From the evidence which details that transaction, it appears that from sixty to one hundred men, who were collected from the upper parts of the Ohio, under the direction of Tyler and Floyd, had descended the river, and reached the mouth of Cumberland about the 25th of December, 1806. The next day they went on shore, and formed a line, represented by some as somewhat circular, to receive Colonel Burr, who was introduced to them, and who said that he had intended to impart something to them, or that he had intended to communicate to them his views, but that reasons of his own had induced him to postpone this communication; or, as others say, that there were then too many bystanders to admit of a communication of his objects.

The men assembled at the mouth of Cumberland appear to have considered Colonel Burr as their chief. Whatever might be the point towards which they were moving, they seemed to have looked upon him as their conductor.

They demeaned themselves in a peaceable and orderly manner. No act of violence was committed, nor was any outrage on the laws practised. There was no act of disobedience to the civil authority, nor were there any military appearances. There were some arms, and some boxes, which might or might not contain arms. There were also some implements of husbandry, but they were purchased at the place. These men assembled under contracts to settle a tract of country on the Red river. No hostile objects were avowed; and, after continuing a day or two on an island in the mouth of the river, the party proceeded down the Ohio.

There are some circumstances in this transaction which are calculated to excite attention and awaken suspicion. If the exclusive object of those who composed this meeting was to settle lands, it would naturally form the subject of public conversation, and there would most probably have been no impediment to a free communication respecting it. The course of the human mind would naturally lead to such communications. The silence observed by the leaders on this subject, connected with hints of ulterior views, seems calculated to impress on the minds of the people themselves that some other project was contemplated, and was probably designed to make that impression.

That the men should have been armed with rifles was to be expected, had their single object been to plant themselves in the Washita; but the musket and bayonet are, perhaps, not the species of arms which are most usually found in our frontier settlements; nor were the individuals who were assembled of that description of persons who would most naturally be employed for such a purpose. The engagement for six months, too, is a stipulation for which it is difficult to account, upon the principle that a settlement of lands was the sole or principal object in contemplation.

These are circumstances which excite suspicion. How far they may be accounted for by saying that ulterior eventual objects were entertained, and that the event on which those objects depended was believed to be certain, or nearly certain, I need not determine; but I can scarce suppose it possible that it would be contended by any person that the transactions at the mouth of Cumberland do in themselves amount to an act of levying war. There was neither an act of hostility committed, nor any intention to commit such act avowed.

Very early in the proceedings which preceded this motion, I declared the opinion that war might be levied without a battle, or the actual application of force to the object on which it was designed to act; that a body of men assembled for the purpose of war, and being in a posture of war, do levy war; and from that opinion I have certainly felt no disposition to recede. But the intention is an indispensable ingredient in the com-

position of the fact; and, if war may be levied without striking a blow, the intention to strike must be plainly proved.

To prove this intention, the prosecutor for the United States offers evidence of conversations held by the accused, or some of them, with various individuals, at different times, relative to the views which were entertained, and the plans which had been formed, and of certain facts which took place after leaving the mouth of Cumberland; for, although it was decided not to be within the power of this court to commit for trial in a Territory of the United States, yet every transaction within a Territory has been given in evidence, in the expectation that such testimony might serve to explain the meeting at the mouth of Cumberland, and because it was believed to be proper for an examining magistrate to receive it.

That conversations or actions at a different time and place might be given in evidence as corroborative of the overt act of levying war, after that had been proved in such a manner as to be left to a jury, I never doubted for an instant; but that, in a case where the intent could not be inferred from the fact, and was not proved by declarations connected with the fact, among which I should include the terms under which those who composed the assemblage were convened together, this defect could be entirely supplied by extrinsic testimony, not applying the intent conclusively to the particular fact, is a point on which I have entertained doubts which are not yet entirely removed. The opinion of Judge Iredell, in the case of John Fries, according to my understanding of it when read at the bar, appears to bear strongly on this point; and that opinion would be conclusive with me, at least while acting as an examining magistrate. I have not reviewed it particularly, because my decision will not depend on the propriety of admitting this mode of proving the intent.

It has also been made a question whether, after proving a connexion between the accused for some general object, the conversations of one of them may be given in evidence against any other than himself for the purpose of proving what that object was. On the part of the United States it is insisted that such conversations may be given in evidence on an indictment for treason in levying of war. By the defence it is contended that such evidence is only admissible on indictments for a conspiracy, or on indictments where a conspiracy may be laid as an overt act.

The principle that one man shall not be criminated by the declarations of another, not assented to by him, not made in due course of law, constitutes a rule of evidence which ought not unreflectingly to be invaded.

It is one of those principles which I do not think myself required to decide, because I am not sure that its decision, however interesting it might be on a trial in chief, would essentially affect the question of commitment; nor am I confident that its decision, as argued on the part of the United States, would introduce the testimony it was designed to introduce. In the English books, generally, the position that the declarations of a person not on trial may be given in evidence against a man proved to have been connected with him, is laid down only in cases of conspiracy, where the crime is completed without any other open deed. The position is certainly not laid down with respect to such cases in terms which exclude its application to others; but it is laid down in general terms, and is affirmed to apply to those particular cases, without being affirmed to apply to others. From this general observation relative to the English books, East is to be excepted. He states the proposition generally; yet it may well be doubted whether this general statement was not with a view to the law in that treason which, in England, almost swallows up every other.

But admitting the law to be the same in treason by levying war in cases of conspiracy, how far does it extend?

The doctrine on this subject was reviewed in the cases of Hardy and Tooke. On the part of the Crown, a letter of Thelwall containing seditious songs, composed by himself and sung in the society, was offered as evidence against Hardy, who was connected with Thelwall. This testimony was rejected, because it was not a part of the transaction itself, but an account of that transaction given by Thelwall to a person not engaged in the conspiracy. The court was divided; three for rejecting, and two for admitting the evidence.

A letter addressed by one conspirator to another, but not proved to have been received, was then offered and admitted against the opinion of the Chief Justice, who thought that such a letter did not amount to an act done, which might be evidence, but only to a relation of that act, which could not be evidence. He was overruled, because a letter from one conspirator to another on the conspiracy, was a complete act in that conspiracy.

The next paper offered was a letter from a society in the conspiracy, which was found in the possession of one of the conspirators, and this was unanimously admitted.

The principle which appears to be established by these decisions is, that a letter from one conspirator to another on the subject of the conspiracy is evidence against all, but that a letter from a conspirator to a person not connected with him, stating facts relative to the conspiracy, is only evidence against himself. How far a conversation held with a stranger, for the purpose of bringing him into the plot, may be considered as a transaction, and, therefore, testimony to show the general conspiracy, does not appear from these decisions.

This species of evidence is received to show the general object of the conspiracy, but can affect no individual further than his assent to that object can be proved by such testimony as is admissible in ordinary cases.

I notice this point for the purpose of observing that I do not decide it on the present motion.

The first question which arises on the evidence is—

With what objects did those men convene who assembled at the mouth of Cumberland?

Was it to separate the Western from the Eastern States, by seizing and holding New Orleans?

Was it to carry on an expedition against Mexico, making the embarcation at New Orleans?

Was this expedition to depend on a war with Spain?

The conversation held by Colonel Burr with Commodore Decatur stated his object to be an expedition against Mexico, which would be undertaken, as the Commodore understood, with the approbation of Government, in the event of war.

To General Eaton he unfolded, in various conversations, plans for invading Mexico, and also for severing the Western from the Atlantic States.

To Commodore Truxtun he spoke of the invasion and conquest of Mexico in the event of a war, as a plan which he had digested in concert with General Wilkinson, and into which he was extremely desirous to draw the Commodore. A circumstance was narrated by this witness, which has been noticed by the counsel for the United States, and deserves consideration. It is the declaration of Colonel Burr that he was about to despatch two couriers with letters to General Wilkinson relative to the expedition. It was at this time that Messrs. Bollman and Swartwout are said to have left Philadelphia, carrying each a copy of the ciphered letter, which has constituted so important a document in the various motions that have been made on this occasion. This letter, though expressed in terms of some ambiguity, has been understood by the Supreme Court, and is understood by me, to relate to a military expedition against the territories of a foreign Prince. In this sense the testimony offered on the part of the United States shows it to have been also understood by Bollman, by Swartwout, and by General Wilkinson. The inference is very strong, that this letter is the same to which Colonel Burr alluded in his conversation with Commodore Truxtun, and strengthens the idea that the accused gave to that gentleman a true statement of the real object, so far, at least, as relates to the point against which his preparations were to be directed. All the conversations relative to an expedition by sea would be equally inapplicable to any attempt on the territories of the United States, and to the settlement of lands.

His conversations with the Messrs. Morgan certainly indicate that his mind was strongly directed to military objects, that he was not friendly to the present Administration, and that he contemplated a separation of the Union as an event which would take place at no very distant day.

His conversation with Lieutenant Jackson points in express terms to hostility against Spain.

The conversations of Mr. Blannerhasset evince dispositions unfriendly to the Union, and his writings are obviously intended to disaffect the Western people, and to excite in their bosoms strong prejudices against their Atlantic brethren. That the object of these writings was to prepare the Western States for a dismemberment, is apparent on the face of them, and was frequently avowed by himself. In a conversation with the Messrs. Henderson, which derives additional importance from the solemnity with which his communications were made, he laid open a plan for dismembering the Union under the auspices of Mr. Burr. To others, at subsequent times, he spoke of the invasion of Mexico, as the particular object to which the preparations then making were directed. In all, those whom he sought to engage in the expedition, the idea was excited that, though the Washita was its avowed object, it covered something more splendid; and the allusions to Mexico, when not directed, were scarcely to be misunderstood.

The language of Comfort Tyler also tends to prove that the enterprise was destined against Mexico.

The communications made to General Wilkinson deserve much consideration in marking the real intention of the parties, because it is obvious that Col. Burr, whether with or without reason, calculated on his co-operation, with the army which he commanded, and that on this co-operation the execution of his plan greatly, if not absolutely, depended. To General Wilkinson, both the ciphered letter and the explanations made by Bollman and Swartwout, declared the expedition to be military, and to be intended against Mexico.

I do not think the authenticity of this letter can now be questioned. When to the circumstances enumerated by the counsel on the part of the United States are added the testimony of Mr. Swartwout, and its being written in a cipher previously established between General Wilkinson and Colonel Burr, I think it sufficiently proved, at least for the present, although not in the handwriting of the person to whom it is ascribed.

The conversation stated by General Wilkinson as passing between Mr. Swartwout and himself, so far as it is contradicted by that gentleman, cannot affect Mr. Burr; for this plain reason: the person alleged to have made those declarations avers not only that he never made them, but that he was never authorized to make them; that he never heard from Mr. Burr any sentiment indicating designs against any part of the United States, and never even suspected him of such designs. If, then, General Wilkinson be correct, I must consider the observations he narrates as the conjectures of Mr. Swartwout, not authorized by Mr. Burr.

It is also a circumstance of some weight, that Mr. Burr's declarations at the mouth of Cumberland furnish strong reasons for the opinion that he did not wish those to whom he addressed himself to consider the Washita as his real ultimate object; and the reference to further information from their particular leaders would naturally induce the expectation, that without any open avowal their minds would be gradually conducted to the point to which their assent was to be obtained. We find there were rumors among them of attacking Baton Rouge, of attacking other parts of the Spanish dominions, but not a sugges-

tion was heard of hostility against the United States.

On comparing the testimony adduced by the United States with itself, this is observable. That which relates to treason indicates the general design, while that which relates to the misdemeanor points to the particular expedition which was actually commenced. Weighing the whole of this testimony, it appears to me to preponderate in favor of the opinion that the enterprise was really designed against Mexico.

But there is strong reason to suppose that the embarcation was to be made at New Orleans, and this, it is said, could not take place without subverting for a time the Government of the Territory, which it is alleged would be treason. The Supreme Court has said, that to revolutionize a Territory by force, although merely as a step to or a means of executing some greater projects, is treason. But an embarcation of troops against a foreign country may be made without revolutionizing the Government of the place, and without subverting the legitimate authority. It is true that violence might probably result from such an attempt, and treason might be the consequence of its execution; but this treason would arise incidentally, and would not be the direct object for which the men originally assembled. This treason would attach to those who committed it, but would not, I am inclined to think, infect a previous assemblage, convened for a distinct purpose. If the object of the assemblage at the mouth of Cumberland was to embark at New Orleans for the purpose of invading Mexico, the law relative to that assemblage would be essentially different from what it might be if their direct object was to subvert the government of New Orleans by force. If in prosecuting their purpose at New Orleans war should be levied, this would be treason at New Orleans where the fact was committed, but it could not, I think, be said to be treason by levying war at the mouth of Cumberland, where the fact was neither committed nor intended. It might be otherwise if, at the mouth of Cumberland, the determination to subvert the government of a Territory by force had been formed.

This opinion may be in some degree illustrated by the doctrine of the English books. Levying war is an overt act of compassing the King's death. So is a conspiracy to levy war, provided the conspiracy be direct against the King or his Government. But if it be a conspiracy to do an act of constructive treason, which act, if done, would support an indictment for compassing the King's death, the conspiracy without the act will not support the indictment. So in this case, if the object be the embarcation of a body of men against a foreign country, in the execution of which war may or may not be levied, the fact becomes necessary to constitute the treason.

It is also a circumstance of considerable weight with me, that the proof exhibited by the United States to establish a general design to dismember the Union, applies only to Colonel Burr and Mr. Blannerhasset. It is not proved to have been ever communicated even to Tyler or Floyd. There is not only a failure to prove that such a design was communicated to or entertained by the men who were assembled at the mouth of Cumberland, but the contrary is in full evidence. The United States have adduced several witnesses belonging to that assemblage who concur in declaring that they heard nothing, that they suspected nothing, and that they would have executed nothing, hostile to the United States. This testimony cannot be disregarded, for it is uncontradicted, and is offered by the prosecution. How can this assemblage be said to have levied war against the United States?

Had Burr and Blannerhasset constituted this meeting, no man could have construed it into an act of levying war, whatever might have been their purpose. Their being joined by others having no hostile intentions against the United States, who were attached to them with other views, and who would not permit themselves to be employed in the execution of such intentions, does not seem to me to alter the case. The reason why men in a posture of war may be said to levy war before a blow is struck, is, that they are ready to strike, and war consists in the various movements of a military force, as well as in actual fighting. But these men were not ready nor willing to strike, nor could their chief be ready to strike without them. He had yet to prevail upon them to come into his measures. This is not a meeting for the purpose of executing a formed design, but a meeting for the purpose of forming a design. It is, therefore, more in the nature of conspiracy than of actual war.

Suppose Mr. Burr had, at the mouth of Cumberland, declared his object to be to seize upon New Orleans and dismember the Union; and that, upon this declaration, his men had universally abandoned him; could this have been denominated an act of levying war? If we forget the Constitution and laws of our country, if we suppose treason, like moral guilt, to consist in the intention, and that it may be legally evidenced by words declaring that intention, the answer to this question may be in the affirmative; but if it can consist only in an open deed of levying war, I confess myself unable to perceive how such a proposition can be construed into such a deed.

The case does not appear to me to be essentially varied by the circumstance that this design was not avowed, and that the men followed Colonel Burr with other views. Upon general principles, it appears to me, that unless some act be committed from which a treasonable intent may be inferred, that the treasonable intent must be proved in the assemblage, where that assemblage is composed of free agents, as well as in the person who convenes them, before the law considers war as being actually levied. This opinion is supposed to be contrary to the decision in the case of the Earls of Essex and Southampton. I have examined that case as reported in the State Trials, and do not think it in any respect contradictory to the ideas I have delivered.

The design of the Earl of Essex was to force his way into the palace, and to remove certain

counsellors from the Queen, who were his enemies; but he intended no hurt to the person of the Queen. For the purpose of executing this design, he assembled a large body of armed men at his own house, who continued to be imbodied after being ordered by the proper authority to disperse; and he also entered the city of London for the purpose of raising the citizens in order further to aid him in the execution of his plan. Several consultations had been previously held, at which the Earl of Southampton assisted, and it is not alleged in the case that he was not fully informed of these projects. He believed that no design was entertained against the person of the Queen; and, therefore, that his acts were not treasonable; but in the law he was mistaken. In fact, no particular design against her person was entertained, and Essex as little suspected as Southampton that they were committing treason. They were ignorant that the law pronounced those facts to be treason, but they were neither ignorant of the facts themseves nor of the real intention with which those facts were committed.

In this case the judges delivered their opinion of the law on two points. The one "that in case where a subject attempted to put himself into such strength as the King shall not be able to resist him, and to force and compel the King to govern otherwise than according to his own royal authority and direction, it is manifest rebellion." The other, "that in every rebellion the law intendeth as a consequent the compassing the death and deprivation of the King, as foreseeing that the rebel will never suffer that King to live or reign who might punish or take revenge of his treason or rebellion."

Under this law opinion of the judges, Essex and Southampton were condemned and executed. The only difference between them was that the quarrel was the quarrel of Essex, and Southampton only adhered to him; but he adhered to him knowing what he did, and the intention with which he acted.

Believing, then, the weight of testimony to be in favor of the opinion that the real and direct object of the expedition was Mexico, and inclining also to the opinion, that in law, either acts of hostility and resistance to the Government, or a hostile intention in the body assembled, is necessary to convert a meeting of men with ordinary appearances into an act of levying war, it would, in my judgment, be improper in me to commit the accused on the charge of treason.

It is contended that they are not guilty of a misdemeanor, on one of these grounds: Either the United States were actually at war with Spain, or the expedition was dependent on war; and, in the event of peace, was to be converted into a settlement on the Washita.

It is alleged that we were at war with Spain, because a Spanish army had crossed the Sabine, and entered the territory of the United States.

That a nation may be put in a state of war by the unequivocal aggressions of others without any act of its own, is a proposition which I am not disposed to controvert; but I cannot concede this to be such an act. The boundaries claimed by the United States to their recent purchase of Louisiana are contested by Spain. Now if either nation takes possession of the contested territory as its own, it is an act which the opposite Government may elect to consider either as an act of war or otherwise; and only the Government can make that election. No citizen is at liberty to make it, or to anticipate his Government.

But it is alleged that war, if not absolutely made, appeared to be inevitable; and that the prosecution of the expedition depended on its taking place. That the probability of war was great may be admitted; and this may extenuate the offence, but it still remains an offence which is punishable by law. If the expedition was really eventual, and was not to take place in time of peace, then, certainly, preparations might be made for it without infracting any law; but this is a fact proper for the exclusive consideration of a jury, and I shall make no comment upon it which might, the one way or the other, influence their judgment.

I shall commit Aaron Burr and Herman Blannerhasset, for preparing and providing the means for a military expedition against the territories of a foreign Prince, with whom the United States were at peace. If those whose province and duty it is to prosecute offenders against the laws of the United States shall be of opinion that a crime of a deeper dye has been committed, it is at their choice to act in conformity with that opinion.

Israel Smith is not proved to have provided or prepared any means whatever, and therefore I shall not commit him. If he has really offended against the laws, he may be prosecuted for the treason in Kentucky, or for the misdemeanor in his own State, where, if anywhere, his offence has been committed.

PROCEEDINGS AND DEBATES

OF THE

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,

AT THE FIRST SESSION OF THE TENTH CONGRESS, BEGUN AT THE CITY OF WASHINGTON, MONDAY, OCTOBER 26, 1807.

MONDAY, October 26, 1807.

This being the day appointed by Proclamation of the President of the United States, of the thirtieth day of July last, for the meeting of the Congress, the following members of the House of Representatives appeared, produced their credentials, and took their seats, to wit:

From New Hampshire—Peter Carlton, Daniel M. Durell, Francis Gardner, Jedediah K. Smith, and Clement Storer.

From Massachusetts—Joseph Barker, John Chandler, Orchard Cook, Richard Cutts, Josiah Deane, William Ely, Isaiah L. Green, Daniel Ilsley, Josiah Quincy, Ebenezer Seaver, William Stedman, Samuel Taggart, Joseph B. Varnum, and Jabez Upham.

From Vermont—Martin Chittenden, James Elliot, James Fisk, and James Witherall.

From Rhode Island—Nehemiah Knight, and Isaac Wilbour.

From Connecticut—Epaphroditus Champion, Samuel W. Dana, John Davenport, Jonathan O. Mosely, Timothy Pitkin, jr., Lewis B. Sturges, and Benjamin Tallmadge.

From New York—John Blake, junior, Barent Gardenier, John Harris, Reuben Humphreys, William Kirkpatrick, Josiah Masters, Samuel Riker, John Russell, Peter Swart, David Thomas, John Thompson, James J. Van Allen, Philip Van Cortlandt, Killian K. Van Rensselaer, and Daniel C. Verplanck.

From New Jersey—Ezra Darby, William Helms, John Lambert, Thomas Newbold, James Sloan, and Henry Southard.

From Pennsylvania—David Bard, Robert Brown, William Findley, John Heister, Robert Jenkins, James Kelly, William Milnor, Daniel Montgomery, jr., John Porter, John Pugh, John Rea, Jacob Richards, Matthias Richards, John Smilie, Samuel Smith, and Robter Whitehill.

From Maryland—John Campbell, Charles Goldsborough, Philip B. Key, Edward Lloyd, William McCreery, John Montgomery, Nicholas R. Moore, Roger Nelson, and Archibald Van Horne.

From Virginia—Burwell Bassett, William A Burwell, Matthew Clay, John Clopton, John Dawson, John W. Eppes, James M. Garnett, Peterson Goodwyn, Edwin Gray, David Holmes, Walter Jones, Joseph Lewis, jr., John Love, John Morrow, Thomas Newton, jr., John Randolph, and John Smith.

From North Carolina—Evan Alexander, Willis Alston, jr., Thomas Blount, John Culpepper, Thomas Kenan, Lemuel Sawyer, Richard Stanford and Meshack Franklin.

From North Carolina—Lemuel J. Alston, jr., William Butler, Joseph Calhoun, Thomas Moore, John Taylor, and David R. Williams.

From Georgia—William W. Bibb, Howell Cobb, Dennis Smelt, and George M. Troup.

From Ohio—Jeremiah Morrow.

From Kentucky—Joseph Desha, Benjamin Howard, and Richard M. Johnson.

From Tennessee—John Rhea, and Jesse Wharton.

The Assistant Clerk of the House announced 117 members and one delegate to be present, being a majority of the whole number. He then inquired if it were the pleasure of the House to proceed to the appointment of a SPEAKER, which being determined in the affirmative, the members proceeded to ballot for that officer, Messrs. CUTTS, HELMS, and JOHN CAMPBELL, being named tellers.

The tellers, after examining the votes, reported that 117 were received, and JOSEPH B. VARNUM, a Representative from the State of Massachusetts, having fifty-nine of them, was declared to be duly elected.

The votes were given as follows, viz:

Joseph B. Varnum, 59; Charles Goldsborough, 17; Burwell Bassett, 17; Josiah Masters, 8; Thomas Blount, 7; John Dawson, 4; John Smilie, 2; Benjamin Tallmadge, 1; Timothy Pitkin, 1; and R. Nelson, 1.

The SPEAKER being conducted to the Chair, by Mr. VAN CORTLANDT and Mr. ALSTON, addressed the House as follows:

Gentlemen of the House of Representatives:

You will please to accept my most grateful acknowledgments for the honor which by your suffrages on this occasion you have conferred upon me. I am sensible of my own inability to perform the important duties you have been pleased to assign me, in the most desirable manner; but relying on your candor and readiness to afford me your aid, I accept the trust. And be assured, gentlemen, that it will be my assiduous endeavor to discharge the duties of the office faithfully and impartially; and in a manner which, in my opinion,

shall be best calculated to meet your wishes and afford me the consolation of an approving conscience.

The oath to support the Constitution of the United States, as prescribed by the act, entitled "An act to regulate the time and manner of administering certain oaths," was administered by Mr. VAN CORTLANDT, one of the Representatives for the State of New York, to the SPEAKER; and then the same oath, or affirmation, was administered by Mr. SPEAKER to all the members present.

GEORGE POINDEXTER, Esq. having also appeared as the delegate from the Mississippi Territory of the United States, the said oath was administered to him by the SPEAKER. The same oath, together with the oath of office prescribed by the said recited act, were also administered by Mr. SPEAKER to the Clerk.

A message from the Senate informed the House that a quorum of the Senate is assembled, and ready to proceed to business. Also, that the Senate have appointed a committee on their part, jointly, with such committee as may be appointed on the part of this House, to wait on the PRESIDENT OF THE UNITED STATES, and inform him that a quorum of the two Houses is assembled, and ready to receive any communications he may be pleased to make to them.

Ordered, That a message be sent to the Senate, to inform them that a quorum of this House is assembled, and have elected JOSEPH B. VARNUM, Esq., one of the Representatives for the State of Massachusetts, their Speaker; and that the Clerk of this House do go with the said message.

Mr. BASSETT, Mr. GOLDSBOROUGH, and Mr. MASTERS, were appointed a committee on the part of this House, jointly, with the committee appointed on the part of the Senate, to wait on the PRESIDENT OF THE UNITED STATES, and inform him that a quorum of the two Houses is assembled, and ready to receive any communication that he may be pleased to make to them.

Resolved, That the rules and orders established by the late House of Representatives, shall be deemed and taken to be the rules and orders of proceeding to be observed in this House, until a revision or alteration of the same shall take place.

ELECTION OF CLERK, &c.

The House next proceeded to the election of a Clerk. The same tellers which had been appointed on the former election having been named by the Speaker on this, the members proceeded to ballot. It appearing to the tellers, on examining the votes, that one of the members had, by mistake, voted twice, this balloting, after a few desultory remarks, was set aside, and a fresh one taken, the result of which was as follows: Nicholas B. Vanzandt, 37; Patrick Magruder, 26; James Elliot, 16; J. W. King, 16; —, 14; —, 14; —, 5; —, 1.

No person having a majority of votes, another balloting took place, the votes of which were: N. B. Vanzandt, 52; P. Magruder. 28; J. Elliot, 15; J. W. King, 10; W. Lambert, 7; T. Hansford, 4; and C. Minifie, 1.

A third balloting was about to take place, when Mr. RANDOLPH rose, and observed that he never felt more reluctance in addressing the House than on the present occasion; but a sense of the duty which he owed to that body, and which he should always endeavor to fulfil to the best of his ability, impelled him to speak. He perceived among the candidates for the office of Clerk of that House—a high and honorable trust—a person who came before him in such a shape, and under such circumstances, that were he to withhold the information, which he was about to give, from the House, and this person should be elected, he could not answer for the neglect. The person to whom he alluded had a plurality of votes on the last ballot. This person, the session before the last, was chief Clerk in the office of Mr. Beckley. There was an order of the House that the doors should be closed. The Clerk is a sworn officer, bound not to divulge the proceedings of the House on such occasions. He did his duty; but the assistant clerks did not perform theirs. They posted themselves at the gallery door, where, it was found, on examination, that every word could be as distinctly heard as on the floor of the House. These clerks heard the debates which took place, and the person to whom he had alluded was one of them. Mr. R. said he had heard repeated some of the expressions which he had used in the House, before he reached his lodgings at Georgetown. This person came to him afterwards and apologized for his conduct. [Here Mr. VANZANDT (the Clerk alluded to) making a motion of his head, significant of his dissent from the truth of his allegation, Mr. R. said he perceived that what he said was contradicted, and was about to sit down. The SPEAKER desired him to proceed. He said he must decline entering into a contest of this kind and added only, that a person who was capable of violating his duty in a subordinate trust, certainly ought not to be elected to the important office in question.]

Mr. ALSTON thought the House ought to adjourn, in order to afford an opportunity of examining into this matter, and made a motion to this effect; which motion was negatived.

The propriety of postponing the appointment of a Clerk till to-morrow was suggested, in order that the House might proceed with business. A motion made for this purpose was negatived.

The SPEAKER informed the House that he had received a letter from the person officiating as Clerk, which he was requested to lay before the House. The letter was read by the SPEAKER. It desired permission to be heard at the bar of the House in order to disprove the assertions which had been made by the member from Virginia in respect to the writer's conduct at a former session.

Mr. SMILIE hoped no order would be taken upon this letter. He thought the request to be heard at the bar of the House a very extraordinary one, and if listened to might form a dangerous precedent.

The House proceeded to another balloting for Clerk, the result of which was: Patrick Magruder, 52; James Elliot, 27; Nicholas B. Vanzandt, 16; Josias W. King, 9; Theodosius Hansford, 5; and William Lambert, 8.—117.

Fifty-nine votes being necessary to a choice, another balloting was immediately had, when PATRICK MAGRUDER was declared to be duly elected, he having seventy-two votes. The votes given to the other candidates were not announced.*

* *Circular addressed to the members of the House of Representatives of the United States.*

WASHINGTON CITY, *Oct.* 29, 1807.

SIR: I feel compelled, from the duty I owe to myself and family, to answer the charges which were on Monday last so unexpectedly advanced against my character, of having improperly divulged the secret proceedings of the House, during the first session of the ninth Congress. The charges themselves give me no uneasiness, for I can prove them to be totally unfounded, and which, even admitting them to be true, would constitute no breach of confidence or honor. But I might have expected that the gentleman from Virginia, who made them, would at least have shown some respect for my feelings in the manner in which he introduced them to the knowledge of the House. He had during the last Summer received from me a personal notice at his own house, of my intention of applying for the office of Clerk of the House of Representatives. He ought then to have stated the objections he had to my character, or have taken the course usually adopted against a candidate. Had he given me notice of his intention of stating publicly to the House his objections to me, I would have been prepared with such evidence as must have removed all unfavorable impressions from the minds of those who were unacquainted with me. But to rise suddenly in his place, and that too, after a second ballot for Clerk, to address a public body, many of whom were unacquainted with me, to bring charges against my character without leaving me the power of self-defence, was a course of conduct, the propriety of which I must leave to himself to explain, and to the public to judge.

But it is not the object of this address to recriminate; nor shall I advert to the singularity of permitting a public denunciation of the character of a private individual to have its intended effect where the privilege of self-defence is not also permitted. I shall briefly state the circumstances which gave rise to Mr. Randolph's impressions.

At the commencement of the secret proceedings of the *first* session of the *ninth* Congress, no precaution was taken by the House to have doorkeepers stationed at each of the passages leading to the hall of the House to prevent persons from listening. It was not, therefore, to be wondered at if the nature and subject of the debates should accidentally transpire while curiosity respecting them was so much alive. A gentleman of the name of Charles Evans did discover what was the subject of those debates, and heard the speeches of Messrs. Randolph and Eppes. He communicated the substance of them *publicly*, and I immediately afterwards communicated what I had heard from him to Mr. Bedinger, then a member from Kentucky, *with the express view of convincing him how easy it was for the proceedings of the House to become public, notwithstanding the order for closing the doors*; and it is highly probable that Mr. Bedinger repeated it to other members, without being particular in relating also the manner in which I became possessed of a knowledge of the debates. And it is a matter of notoriety that such is the strength and clearness of the voice of Mr. Randolph that it can be heard even outside of the walls of the Capitol.

Mr. Bedinger, after my communication to him, frequently assured me that he was taking every precaution to prevent the possibility of any prejudice to my character, which might result from the nature of the communication I had made to him. I have written to him to verify this statement. Had I been guilty of any breach of confidence, is it to be supposed I would have communicated what I had so improperly discovered to a member of the very body whose secret proceedings I am charged with having disclosed? Or that, being an officer, I would in so palpable a manner, have exposed myself to the censure of the House, and to public disgrace?

It has been said that I was found listening in the committee room adjoining the House of Representatives. This charge I also declare to be unfounded. I was never in that committee room but once during the session of the House with closed doors, and then I was in company with Mr. Burch, junior, one of the clerks, upon business relating to the office. And besides, the Sergeant-at-Arms and a late Clerk in the office were in the room at the time we entered it, and I did not hear anything of what was going on in the House. The charge of listening at the gallery door I absolutely deny.

The gentleman from Virginia, my unjust and cruel accuser, has stated that I confessed my fault and apologized for it to him. In this particular he is very incorrect. On hearing during that session that he had brought into the House some charge of the same kind, I waited upon him and informed him what I have here stated, with which he then appeared to be perfectly satisfied. If he construed anything I then said into an apology he must have strangely misunderstood me. It would not, however, be strange if he had forgotten the particulars of a conversation that occurred nearly two years ago. Had he or any other member believed the report to be correct at the time it was first circulated, would not some inquiry have been instituted into it, and if proved guilty my dismissal from office have then taken place? But no mention of it was ever made after my conversation with Mr. Randolph. And I repeat it, that with the statements I then made to him he appeared perfectly satisfied. From that period I have been continued in the office as principal Clerk, and for a considerable time during the last session acted as Clerk of the House.

In addressing you, sir, on this subject, the solicitude I feel for my character is my only object. Had I met with an adversary against whom I could have been permitted to contend on equal grounds, or have given me notice of his intended attack, I might, perhaps, been your choice as Clerk of the House, and enjoyed an eligible situation for the support of my family. But to preserve a character unblemished, which was on Monday last, so undeservedly aspersed, and to return my thanks to those who gave me their support, are the only objects I have now in view.

TUESDAY, October 27.

Several other members, to wit: from Virginia, ABRAM TRIGG and ALEXANDER WILSON; from South Carolina, ROBERT MARION; and from Tennessee, GEORGE W. CAMPBELL; appeared, produced their credentials, were qualified, and took their seats in the House.

Mr. BASSETT, from the committee appointed

yesterday to wait upon the President of the United States, to inform him Congress was formed and ready to receive any communication he might have to make to them, reported, that he would make a communication to the two Houses by message at 12 o'clock this day.

The House proceeded, by ballot, to the appointment of a Sergeant-at-Arms to this House; and, upon examining the ballots, a majority of the votes of the whole House was found in favor of Thomas Dunn.

A Message was received from the President of the United States, which, with the documents accompanying the same, were referred to the Committee of the Whole on the state of the Union. [*Vide* Senate Proceedings, of this date, *ante*, page 14.]

A message from the Senate informed the House that the Senate have resolved that two Chaplains, of differnt denominations, be appointed to Congress for the present session; one by each House, who shall interchange weekly. Also, communicating to the House the petition of Samuel Biddle and others, impressed American seamen, now detained on board the British sloop of war Wolverine.

The said petition of Samuel Biddle, and others, was read, and referred to the Secretary of State, with instruction to examine the matter thereof, and report the same, together with his opinion thereupon, to the House.

Resolved. That the Clerk of the House cause the members to be furnished, during the present session, with three newspapers to each member, such as the members respectively shall choose, to be delivered at their lodgings; and that if any member shall choose to take any newspaper other than a daily paper, he shall be furnished with as many of such papers as shall not exceed the price of a daily paper.

I have the honor to be, very respectfully, sir, your obedient servant,

NICHOLAS B. VANZANDT.

October 28, 1807.

I, Charles Evans, of Georgetown, in the District of Columbia, do hereby certify and declare, that the foregoing statement by Mr. Vanzandt, as far as the same respects my public communication, is strictly true.

CHARLES EVANS.

Witness; John Thompson.

City of Washington, *Oct.* 27, 1807.

I do hereby certify that on the day alluded to yesterday, by the honorable John Randolph, I myself went into the committee room, adjoining the Representatives room, in consequence of the door being open, and without key, with Mr. J. W. King, and stood by the fire, to prevent strangers from entering; that I asked Mr. King if he could hear anything said in the House; he said no—not a word. We then sat down by the fire. Soon after came in Mr. Vanzandt and Mr. Burch, and went to a map near the door entering the Representatives room, when I informed them the House was on confidential business, and they immediately left the committee room.

JOSEPH WHEATON,
Sergeant-at-Arms.

Mr. Thomas moved the following resolution, which was agreed to without a division:

Resolved, That Thomas Claxton be appointed Doorkeeper of this House.

"The following resolution was next moved:"

"*Resolved,* That Jesse Edwards be appointed Assistant Doorkeeper."

Mr. Nelson observed, that he believed there were a number of candidates for this office; and every one ought to have a fair chance to be elected. He had expected this officer would have been appointed by ballot; but if this was not to be the course taken, he should move a resolution similar to the one which had been read, in favor of Benjamin Burch.

Mr. Thomas had been informed that it was usual for the Doorkeeper himself to appoint his deputy. If this had been the course heretofore pursued, he hoped it would be adopted in the present case.

Mr. Findley thought it would be best for the Doorkeper to nominate his deputy, which nomination might be approved or disapproved by the House. He wished therefore, the election of this officer might be postponed till to-morrow, in order to afford time to examine into the character of the person proposed.

Mr. Smilie hoped the resolution would lie on the table. It was well known that the regular and proper mode of appointing officers is by ballot. It is true, that in some instances this mode has been depated from. The House had done so just now in the case of the Doorkeeper. But there was a good reason for this departure. The person in contemplation was an old officer, against whom he had never heard any man make an objection, and against whom there was no opposition. But the present case is very different. A new officer is to be chosen from amongst a number of candidates, most of whom are unknown to a large majority of the members. He hoped the House would therefore proceed to make a choice in the regular mode by ballot, that every candidate might have a fair chance of being elected.

A motion was made, that the House adjourn, which was negatived, there being only eighteen votes in favor it.

Mr. Sloan nominated John Sessford as a candidate for the office of Assistant Doorkeeper—for he deemed it to be the proper mode first to nominate and then to ballot for the office in question.

Mr. Alston hoped the gentleman who had proposed the resolution in favor of Jesse Edwards, would withdraw it, and suffer the election to take place by ballot.

The gentleman consenting, Mr. A. moved that the election of an Assistant Doorkeeper be postponed till to-morrow at twelve o'clock.

This motion was negatived, there being only twenty-six votes in favor of it.

Mr. Dawson nominated Joseph Pollock.

The members then proceeded to ballot, and the votes having been collected and examined, the Tellers reported, that there were present 108 members, and that Jesse Edwards, having fifty-nine votes, was duly elected.

STANDING COMMITTEES.

Mr. DAWSON suggested the propriety of proceeding to the appointment of the standing committees. It had been customary heretofore to make these appointments at an early period of the session. He therefore moved the appointment of a Committee of Elections.

It was again moved that the House adjourn. The motion was negatived, 55 to 45.

Mr. D. renewed his motion for the appointment of a Committee of Elections.

Mr. ALSTON thought it best to move the appointment of all the standing committees together, as had been heretofore the practice.

Mr. DAWSON had no objection to this course. He therefore moved, that a Committee of Elections, a Committee of Claims, a Committee of Commerce and Manufactures, a Committee of Ways and Means, a Committee of Public Lands, a Committee of Revisal and Unfinished Business, and a Committee of Accounts, be appointed.

Mr. BLOUNT having always entertained an opinion that it would be best, and would relieve the Speaker from a very unpleasant duty, to have these Committees appointed by ballot, he would move thus to amend the motion of the gentleman from Virginia. He thought this mode of electing the standing committees, as well as the select committees, to which shall be referred the different subjects contained in the President's communication, would be most satisfactory to the House and to the Speaker also.

Mr. FINDLEY observed, that this was a question of considerable importance; and as the House was then very thinly attended, he hoped this resolution, with the proposed amendment, would be permitted to lie on the table till to-morrow, and made a motion to this effect.

Mr. SMILIE said, the House had, in several instances, tried to appoint committees by ballot, but had always found it attended with difficulty; and he now very much doubted the propriety of the proposed amendment.

The SPEAKER reminded Mr. S. that the motion before the House was for a postponement of the appointment of these committees till to-morrow.

Mr. S. said he meant to give reasons in favor of the appointment. In the election of these committees, it was proper to select the most fit characters for each—on the Committee of Commerce and Manufactures, for instance, there ought to be placed commercial men; on the Committee of Ways and Means, such as were best acquainted with subjects of finance, &c., whereas in committees appointed by ballot, it will depend on accident whether fit persons be appointed or not. Besides, in such elections there is no responsibility; the contrary is the case when the Speaker selects the members of a committee. He is responsible for the choice he makes, and will therefore exercise great precaution in it. From these considerations, he hoped the postponement would be agreed to.

Mr. BLOUNT rose to express his entire approbation of the proposed postponement. He wished the decision to be made in a full House; and when the question of agreeing or disagreeing to the amendment which he had offered shall be under consideration, it will be in order to give reasons for and against the different modes proposed of electing committees.

The motion for postponement was carried, seventy-four votes being in favor of it.

WEDNESDAY, October 28.

Another member, to wit: WILLIAM HOGE, from Pennsylvania, appeared, produced his credentials, was qualified, and took his seat in the House.

Mr. BENJAMIN PARKE, returned to serve in this House as the Delegate from the Indiana Territory of the United States, appeared, produced his credentials, was qualified, and took his seat in the House.

The House proceeded to consider the resolution of the Senate, for the appointment of two Chaplains to Congress for the present session; and the same being read, was agreed to by the House.

The SPEAKER laid before the House a letter from Benjamin H. Latrobe, Surveyor of the Public Buildings at the City of Washington, communicating an explanatory report of the principles on which the south wing of the Capitol, in the City of Washington, was formed, and the progress which has been made in the completion of the same; which was read, and laid on the table.

STANDING COMMITTEES.

The unfinished business of yesterday respecting the appointment of standing committees was taken up, and the amendment of Mr. BLOUNT, directing their election to be by ballot, being under consideration,

Mr. BLOUNT said, he did not think it necessary to use any arguments in support of his motion, but, as he considered it as embracing an important principle, he would take the liberty of calling for the yeas and nays upon it.

The yeas and nays were agreed to be taken.

Mr. SLOAN observed, as the yeas and nays were to be taken on this question, he thought it necessary to state the reasons which would govern his vote. The old members of the House would recollect that, at a former session, he had brought forward a resolution similar to the present, which was lost. But he considered the present case to be somewhat different. There are many new members in the House at the present time, not qualified to vote by ballot, because unacquainted with the members. An additional reason for his voting differently at present, was, that the number of the committees was considerably extended, and he did not think it necessary to take up the time of the House in balloting for so many. His opinion was, that the three most important committees ought to be appointed by ballot, to wit: The Committee of Claims, the Committee of Commerce and Manufactures, and the Committee of Ways and Means. He should, therefore, vote in the negative.

The question being called for, the SPEAKER

stated to the House that the Clerk had not yet prepared an alphabetical list of the members, so that he could not proceed to call the names of members in the manner prescribed by the rules of the House.

Mr. BLOUNT supposed it would make no difference if the names of the members should be called by States. He only wished to see how gentlemen who had so strenuously advocated the balloting for these committees heretofore would now vote. He hoped the House would unanimously agree to dispense with the rule of the House on this occasion.

The question was put, but there being a few negatives, the rule could not be dispensed with.

Mr. BLOUNT declined withdrawing the motion for taking the yeas and nays, and an alphabetical list was directed to be prepared.

Mr. THOMAS was informed that it would take half an hour to make out the proposed list, and as there was other business on the table, he moved that the present motion should lie on the table for one hour.

Mr. VAN CORTLANDT thought this a novel procedure. He believed it would not be in order to postpone the business, except to a day certain.

The SPEAKER said that a motion might be made at any time for a resolution to lie on the table without specifying any time.

The motion for laying on the table was carried, there being 76 votes in favor of it.

NEWSPAPERS FOR MEMBERS.

Mr. D. R. WILLIAMS said, that the order passed yesterday, respecting newspapers, was an exact copy of the resolution on that subject, which had been entered into for several years past, and upon which a different construction had been put by the two Houses. One part of the members took papers for their own information, and another took them for the information of their constituents. Those of us, said Mr. W., who are solicitous to send information to our friends abroad, agreeably to our construction of the resolution, have received only half the advantage from it which had been received by others. [Mr. W. here read the resolution, which provides that each member shall be served with three daily papers, or as many of such other newspapers as they may direct.] Under this resolution the members of this House supposed they could only take three papers, whether daily or not; whereas the members of the Senate understood that they might take to the value of three daily papers in as many others as they thought proper. That a fair construction of this order might be had, he moved that it be reconsidered.

After a few unimportant remarks on this subject—

Mr. RANDOLPH said, that the House was about to establish a dangerous precedent in a very unimportant case. It was in cases of this description that dangerous precedents crept in. It is proposed to reconsider a deliberate act of this House. Passed just now? No; passed yesterday. To what may this lead? This House may at some future time do a deliberate act, and the succeeding day, in a thin House, that act may be rescinded; may on another day be again reconsidered, and again reinstated. And if a precedent of this kind be established, it will be impossible to come to a definitive conclusion on any question. He had himself expected, and very probably the Speaker may so think on more mature reflection, that a motion to reconsider what was done yesterday, is not in order; but, if it should be otherwise determined, he trusted this House would not countenance such procedure. He would rather never read another newspaper as long as he lived than attempt a reversal of this decision.

Mr. QUINCY agreed with the gentleman from Virginia as to the impropriety of reversing the order of yesterday; he thought the decision of the Speaker was correct, according to the rule of the House, which he read; and observed that the rule contained no limitation within which motions for reconsideration were to be made.

Mr. RANDOLPH supposed the gentleman from Massachusetts had misunderstood him. He did not mean to question the decision of the Chair; he did not understand that there had been any decision; he had supposed the circumstance to have escaped the observation of the Chair. But if the course proposed were correct, and any act of this House may be reconsidered on a succeeding day, (he spoke of acts in which the other branch of the Legislature did not concur,) it would be in order to reconsider the appointment of any of the officers of this House; and no member would say that it would be in order to reconsider such an appointment.

Mr. D. R. WILLIAMS acknowledged the justness of the observations of the gentleman from Virginia. The gentleman from Massachusetts, in order to obviate the difficulty into which they had got, had pointed out a different mode of accomplishing his object. He would therefore withdraw his former motion, and offer in its place, the following resolution:

"Whereas doubts have arisen as to the construction of the order yesterday, respecting the furnishing of newspapers to the members of the House of Representatives; to remove which,

"*Resolved*, That the Clerk be directed to obtain newspapers from any number of offices which members may direct, provided the expense does not exceed the amount of the price of three daily newspapers."

The SPEAKER informed the House that the Clerk had prepared an alphabetical list of the members.

STANDING COMMITTEES.

Mr. BLOUNT hoped the question on his amendment to the resolution for appointing standing committees would immediately be taken.

Mr. ELLIOT said, that this question would decide a principle of some consequence. The gentleman from New Jersey, (Mr. SLOAN,) had exceeded his usual ingenuity in his endeavors to convince the House of the correctness of the vote he was about to give against a measure which he had once so strongly advocated. But he says we were then

all old members, capable of exercising this important privilege. While he believed the powers heretofore vested in the Speaker had been well executed, and he had no doubt, were they continued, would be still so executed; and while he wished to see the Chair vested with all the powers incident to that high office, yet, as he had always been of opinion the best way of electing standing committees would be by ballot, and he had not been convinced to the contrary by the ingenuity of the gentleman from New Jersey, he should vote for the amendment.

Mr. SLOAN rose to explain; and said he meant to make no insinuations to the prejudice of any members of this House; he only meant to say that, being strangers, they would be at a loss how to make a choice of proper characters to fill these committees.

The question on the amendment was then taken by yeas and nays—yeas 24, nays 87, as follows:

YEAS—Burwell Bassett, William W. Bibb, Thomas Blount, John Boyle, John Campbell, Howell Cobb, John Dawson, Joseph Desha, James Elliot, John W. Eppes, Meshack Franklin, James M. Garnett, Peterson Goodwyn, Edwin Gray, Edward Lloyd, John Randolph, Samuel Riker, Lemuel Sawyer, Ebenezer Seaver, Jedediah K. Smith, John Smith, Richard Stanford, Archibald Van Horne, and Isaac Wilbour.

NAYS—Evan Alexander, Lemuel J. Alston, junior, Willis Alston, junior, David Bard, Joseph Barker, John Blake, junior, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, Peter Carlton, Epaphroditus Champion, John Chandler, Martin Chittenden, John Clopton, Orchard Cook, John Culpepper, Richard Cutts, Samuel W. Dana, Ezra Darby, John Davenport, junior, Josiah Deane, Daniel M. Durell, William Ely, William Findley, James Fisk, Francis Gardner, Charles Goldsborough, Isaiah L. Green, John Harris, John Heister, William Helms, David Holmes, Benjamin Howard, Reuben Humphreys, Daniel Ilsley, Robert Jenkins, Richard M. Johnson, James Kelly, William Kirkpatrick, Nehemiah Knight, John Lambert, Joseph Lewis, junior, Josiah Masters, William McCreery, William Milnor, Daniel Montgomery, jun., John Montgomery, Nicholas R. Moore, Thos. Moore, Jeremiah Morrow, John Morrow, Jonathan O. Mosely, Thomas Newbold, Thomas Newton, junior, Timothy Pitkin, junior, John Porter, John Pugh, Josiah Quincy, John Rea of Pennsylvania, John Rhea of Tennessee, Matthias Richards, John Russell, James Sloan, Dennis Smelt, John Smilie, Samuel Smith, Henry Southard, William Stedman, Clement Storer, Lewis B. Sturges, Peter Swart, Samuel Taggart, Benjamin Tallmadge, John Taylor, David Thomas, John Thompson, George M. Troup, Jabez Upham, James I. Van Allen, Philip Van Cortlandt, Killian K. Van Rensselaer, Daniel C. Verplanck, Jesse Wharton, Robert Whitehill, David R. Williams, and James Witherall.

The question on the amendment being lost, the original resolution which vests the appointment in the Speaker was agreed to without a division; and the following standing committees thereupon appointed:

Committee of Elections—Mr. FINDLEY, Mr. D. R. WILLIAMS, Mr. MATTHEW CLAY, Mr. LAMBERT, Mr. BLAKE, Mr. STURGES, and Mr. ELLIOT.

Committee of Claims—Mr. HOLMES, Mr. THOS. MOORE, Mr. NELSON, Mr. PITKIN, Mr. SEAVER, Mr. JOHNSON, and Mr. HUMPHREYS.

Committee of Commerce and Manufactures—Mr. NEWTON, Mr. MCCREERY, Mr. CUTTS, Mr. DANA, Mr. MARION, Mr. THOMAS, and Mr. PORTER.

Committee of Ways and Means—Mr. GEORGE W. CAMPBELL, Mr. WILLIS ALSTON, Mr. EPPES, Mr. SMILIE, Mr. TALLMADGE, Mr. FISK, and Mr. MONTGOMERY, of Maryland.

Committee on the Public Lands—Mr. BOYLE, Mr. JEREMIAH MORROW, Mr. GOODWYN, Mr. RUSSELL, Mr. DARBY, Mr. ELY, and Mr. SMELT.

Committee of Revisal and Unfinished Business—Mr. CLOPTON, Mr. VAN RENSSELAER, and Mr. DURELL.

Committee of Accounts—Mr. NICHOLAS R. MOORE, Mr. STEDMAN, and Mr. MILNOR.

THURSDAY, October 29.

Another member, to wit: WILLIAM BLACKLEDGE, from North Carolina, appeared, produced his credentials, was qualified, and took his seat in the House.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanied with a report from the Secretary of the Navy, of the extraordinary expenses incurred by that Department for the year one thousand eight hundred and seven; which were read and ordered to be printed.

The SPEAKER also laid before the House a letter and report of the principal clerk in the office of the late Clerk of the House of Representatives of the United States, of the execution of the resolution of the House, of the third of March, one thousand eight hundred and seven; which were read, and referred to the Committee of Accounts.

The SPEAKER also laid before the House sundry documents touching the elections of the members returned to serve in this House, for the State of Virginia; which being received,

Ordered, That the said documents, together with all the documents touching of elections of members to this House, from the several States, and the elections for the delegates from the several Territories, be referred to the Committee of Elections.

The SPEAKER laid before the House a letter from the Executive of the State of New York, enclosing sundry resolutions of the Legislature thereof, relative to the protection of the port of New York; which were read, and ordered to be printed.

On motion of Mr. RHEA, that the House do come to the following resolution:

Resolved, That the Committee on Public Lands do inquire into the expediency of laying off, and describing, by certain metes and bounds, a tract of country to which the Indian title hath been extinguished, within the limits of Louisiana, and to include all the settlements within the said Territory; and of having the said tract of country laid off into townships and sections, half and quarter sections, agreeable to the several laws heretofore made, for surveying the public lands

of the United States; and also, to inquire into the expediency of granting one quarter of a section to every free male white person who now resides thereon, or who will, within —— years, actually improve and reside thereon.

The question thereupon being taken, it passed in the affirmative.

On motion of Mr. Thomas, that the House do come to the following resolution:

Resolved, That a Committee be appointed to inquire whether any, and what amendments are necessary to be made in the acts establishing a post office and post roads within the United States; and that the said committee have leave to report by bill, or otherwise:

Ordered, That the said resolution do lie on the table.

A message from the Senate, informed the House that the Senate have appointed the Reverend Mr. Gantt, to be one of the Chaplains to Congress, on their part.

REFERENCE OF THE MESSAGE.

Mr. Dawson moved that the House should go into a Committee of the Whole on the state of the Union.

Mr. Thomas wished this business might be laid over until to-morrow. Gentlemen had not yet had sufficient time to examine the President's communication.

The House agreed to go into Committee of the Whole, there being 47 for it, and 42 against it.

The Speaker called Mr. Dawson to the Chair; but he declined, stating that he had prepared some resolutions, which he was about to offer.

Mr. Bassett was then requested to take the Chair; and

Mr. Dawson offered the following resolutions:

1. *Resolved,* That so much of the Message of the President of the United States as relates to aggressions committed within our ports and waters by foreign armed vessels, to the violations of our jurisdiction, and the measures necessary for the protection of our ports and harbors, be referred to a select committee.

2. *Resolved,* That so much of said Message as relates to violations of our maritime rights, to impositions on, or interdictions of our neutral rights, be referred to the Committee of Commerce and Manufactures.

3. *Resolved,* That so much of said Message as relates to our intercourse with the Indian tribes, be referred to a select committee.

4. *Resolved,* That so much of said Message as relates to our military and naval establishments, be referred to a select committee.

5. *Resolved,* That so much of said Message as relates to our finances, be referred to the Committee of Ways and Means.

6. *Resolved,* That so much of said Message as relates to the enterprises against the public peace, and the means of preventing the same, and of punishing their authors, be referred to a select committee.

The first resolution being under consideration,

Mr. Quincy thought this resolution embraced objects unconnected with each other, and objects of magnitude sufficient to warrant a separation of them. The first part of the resolution relates to aggressions committed in our ports and waters. The most material object contained in the President's Message, said Mr. Q., has relation to an attack upon one of our vessels by an armed ship of a particular nation, and all the the other circumstances mentioned are stated merely as aggravations of this attack. He therefore submitted, with deference to the committee, the propriety of referring whatever relates to the attack on the Chesapeake to a select committee; and entering into a separate resolution for the appointment of a distinct committee to consider what may be necessary for the further defence of our ports and harbors. Upon this view of the subject, he would offer an amendment to the resolution in question. He wished to add, after the word "resolved,"

"That so much of the Message of the President of the United States as relates to the attack made on the frigate Chesapeake be referred to a select committee; and that the committee be instructed to inquire into the circumstances of that attack, the causes assigned for making it, and the manner in which it was repelled, and to report the result of such inquiries in detail to this House."

Mr. Quincy stated his object for wishing to give the inquiry this direction was, in the first place, to submit the most prominent subject in the Message to a distinct committee—a subject which stood most prominent in the public mind—a subject which had occasioned a great degree of irritation, and concerning which it was expected the public would no longer remain ignorant of all the circumstances of the transaction. The Message of the President, he said, properly led to this inquiry, and this House ought to pursue it. But he was not for a mere reference of the subject, leaving the committee to act as they might choose upon it; he wished specific instructions to be given them. Indeed, he considered the honor of the nation deeply concerned in the object of the last part of his proposed amendment. He hoped, therefore, the matter would not be huddled up, but that a proper inquiry would be entered into, in the manner proposed.

Mr. Elliot inquired of the chairman if an amendment offered to a resolution, which embraces the same objects with the original motion, ought not to be considered as a complete substitute. It appeared to him that this was the case at present, and that the motion of the gentleman from Massachusetts could not therefore be in order.

The Chairman did not consider the proposed amendment as a substitute for the original motion, and therefore in order.

Mr. Alston could not conceive the object of the gentleman from Massachusetts in making this motion. He surely does not mean to justify the conduct of the British. It will be time enough to enter into an inquiry on this subject hereafter. The matter is proposed to be committed generally, and the committee will make such a report as they think proper. If this report should not be satisfactory to the gentleman from Massachusetts, he can propose any modification of it which he may judge necessary. Does the gentleman mean to cramp the operations of the committee, by giving them his special instructions? He hoped no step would be taken which should be calculated

to narrow the inquiries of this important committee.

Mr. DAWSON observed, that the gentleman from Massachusetts had mistaken his intention in offering the resolution under consideration. He did not mean the proposed committee to inquire particularly into the attack on the Chesapeake. Such an inquiry would be at present premature. When the time arrived for taking up this subject, he should be as ready as the gentleman from Massachusetts, or any other gentleman, to enter upon it. Mr. D. read that part of the Message of the President which has reference to this affair, and asked the members of the committee if it would not be altogether premature to go into this subject before the House received the information which the President of the United States has said he expects shortly to be able to lay before them. His object was to make the ground of reference as general as possible.

Mr. QUINCY said that the gentleman from North Carolina had asked what was his object in making this motion. He would answer, that it was to have the whole detail of the affair respecting the Chesapeake laid upon our tables. It was asked if he meant to justify the British. He knew not why this question should be put. His motion was a plain one. He wished to have the facts which he called for before him, and he should not then be afraid to meet the gentleman from North Carolina, or any other. His principles and feelings were as purely American as those of any gentleman. He wished to gain facts, and, to obtain these, he thought it best to fix on single objects, and not to extend our views over the whole horizon. In reference to what had fallen from the gentleman from Virginia, what he had proposed would have nothing to do with our negotiations abroad. No expression of the opinion of this House is required. All that is asked, is, that the committee shall collect a detail of facts. The committee will not make their report until they think proper; but the inquiry ought to be instituted. Suppose our dispute with Great Britain should be amicably settled, would not the inquiry be necessary? Would you not inquire into the causes which led to the attack? He considered the dispute as being not only between us and Britain, but between us and France. At any rate he wanted the facts, and when they were before the House, a correct judgment might be formed of the affair. The honor of the nation was concerned to know whether a proper degree of resistance had been made to repel the attack of the British by our officers; if not, the opinion of this House ought to be expressed on the occasion.

Mr. ELLIOT felt equally anxious with the gentleman from Massachusetts to receive the information required by this proposed amendment; but he could not consent to suppress the original resolution proposed by the gentleman from Virginia. He did not rise to appeal from the decision of the Chair, or to question the correctness of its opinion; but his own ideas of the spirit of the rules of this House would govern his vote on this occasion, were every other consideration out of view. This rule states, that "No new motion or proposition shall be admitted, under color of amendment, as a substitute for the motion or proposition under debate." Without appealing from the decision of the Chair, he could not help considering the present motion to be a violation of this rule, as it was, in his opinion, under color, a complete substitute for the original motion. He thought one part of the information required by this amendment was altogether unnecessary—he alluded to that part which asks for the manner in which the attack was repelled. Every man, woman, and child, in the United States, knew that no resistance was made. If he were to vote for the resolution, he should wish the word *received* to be used instead of the word "repelled;" but, as he had already stated, he believed the motion was in conflict with a rule of the House, and therefore he could not vote for it.

Mr. SMILIE said, there was one thing which the gentleman from Massachusetts himself, on reflection, must think improper—that was, that part of the motion which relates to the manner in which the attack was repelled. He understood the commander of the Chesapeake was now on trial, and he hoped this House would not do any act which might have an influence on that trial. Whether that officer acted properly or improperly will be determined by the proper tribunal before which it will be tried. Indeed he saw no necessity for this amendment. The original resolution gives the committee full power on this subject, and it cannot be supposed that a committee of this House will not do their duty. He had no doubt but that, before this business was got through, there would be complete information before the House. We should know whether the seamen taken from the Chesapeake were really British subjects or American citizens. The inquiry will force itself upon us, and the resolution as it stands will be sufficient for the purpose.

Mr. QUINCY rose to explain. The gentleman from Pennsylvania had said that he deemed it improper to pass this resolution at this time, because of the effect it might have on the trial now pending. If the object of this motion had been to obtain from the House a vote of censure on one side or the other, he should not now have proposed it: it was merely a direction to the committee in what manner they were to proceed, and to collect a statement of the facts attendant on this occurrence. If the principle were correct, that this House should be prevented from exercising its duties on any point, because a trial was pending in some of the courts, what would be the consequence? Nothing further would be necessary to evade inquiry than to put an officer under arrest, bring him to trial, and postpone the decision from time to time, and thus prevent this House from performing its duty. He saw no weight in this argument.

The amendment was rejected, without a division.

The resolutions being gone through, a motion was made for the Committee to rise; which, being agreed to, the Speaker resumed the chair, and the House immediately took up the resolutions, and agreed to them unanimously.

Mr. Blount, Mr. Chandler, Mr. Burwell, Mr. Goldsborough, Mr. Riker, Mr. Troup, and Mr. Witherall, were appointed a committee, pursuant to the first resolution.

Mr. Cook, Mr. Bibb, Mr. Sloan, Mr. Desha, and Mr. Harris, were appointed a committee, pursuant to the third resolution.

Mr. Dawson, Mr. Helms, Mr. Rea, of Pensylvania, Mr. Butler, Mr. Van Cortlandt, Mr. Champion, and Mr. Storer, were appointed a committee, pursuant to the fourth resolution.

Mr. Randolph, Mr. Blackledge, Mr. Lloyd, Mr. Quincy, Mr. Hoge, Mr. Masters, and Mr. Wilbour, were appointed a committee, pursuant to the sixth resolution.

Friday, October 30.

The House proceeded to consider the motion made yesterday by Mr. Thomas, in the words following to wit:

Resolved, That a committee be appointed to inquire whether any, and what, amendments are necessary to be made in the acts establishing a post office and post roads within the United States; and that the said committee have leave to report by bill, or otherwise.

And the question being taken that the House do agree to the same, it was resolved in the affirmative.

Ordered, That Mr. Rhea of Tennessee, Mr. Southard, Mr. Kenan, Mr. Verplanck, Mr. Green, Mr. Carlton, Mr. Chittenden, Mr. Davenport, Mr. Knight, Mr. Whitehill, Mr. Trigg, Mr. Pugh, Mr. Lemuel J. Alston, Mr. Cobb, Mr. Van Horne, Mr. Jeremiah Morrow, and Mr. Howard, be appointed a committee, pursuant to the said resolution.

On motion of Mr. Rhea of Tennessee, that the House do come to the following resolution:

Resolved, That the Committee on Public Lands do inquire into the expediency of laying off and describing, by certain metes and bounds, a tract of country, to which there is no existing Indian title, within the limits of the Territory of Orleans, and to include all the settlements on the West side of the river Mississippi, within the said Territory, and of having the said tract of country laid off into townships, sections, half and quarter sections, agreeably to the several laws heretofore made for surveying the public lands of the United States; and also to inquire into the expediency of granting one quarter of a section to every free male white person who now resides thereon, or who will, within —— years, actually improve and reside thereon:

And the question being taken that the House do agree to the same, it was resolved in the affirmative.

Mr. Van Cortlandt presented a petition and memorial of Joshua Barney, of the city of Baltimore, which was received and read, stating his claim to a seat in this House, as the Representative for the said city of Baltimore, instead of William McCreery, who hath been returned to serve as one of the members for the fifth district of the State of Maryland.—Referred to the Committee of Elections.

On motion of Mr. Chandler,

Resolved, That a committee be appointed to prepare and report such standing rules and orders as are proper to be observed in this House.

Ordered, That Mr. Winns, Mr. Gray, Mr. J. Campbell, Mr. Brown, and Mr. Gardner, be appointed a committee, pursuant to the said resolution.

Ordered, That the letter and report of Benjamin H. Latrobe, which was read, and ordered to lie on the table, on the twenty-eighth instant, be referred to the committee last appointed.

The House proceeded, by ballot, to the appointment of a Chaplain to Congress, on the part of this House; and, upon examining the ballots, a majority of the votes of the whole House was found in favor of the Rev. Obadiah B. Brown.

Monday, November 2.

Several other members, to wit: from Massachusetts, Ezekiel Bacon; from New York, Gurdon S. Mumford; from North Carolina, James Holland; from Kentucky, Matthew Lyon; and from South Carolina, Richard Winn; appeared, produced their credentials, were qualified, and took their seats in the House.

On motion of Mr. Quincy, that the Journal of this House, of the first day of the present session, be so amended as to express the date of the Proclamation of the President of the United States, therein referred to; the question was taken thereupon, that the Journal be so amended, and it was resolved in the affirmative. And thereupon, the said amendment was made accordingly, by filling up the first blank therein contained, with the word thirtieth, and the second blank with the word July.

Mr. Thomas said, he had the honor to be appointed a member of the Committee of Commerce and Manufactures. He believed it would be allowed by the members who knew him, that he had never failed to perform any duty assigned to him by the House, nor should he ask to be excused from serving on this committee, were it not for this circumstance. At the time the committee was appointed, the immediate representative of the city of New York was not present: that gentleman, said he, is now in his place, who, besides being the representative of that important commercial city, is much better acquainted with questions of commerce than myself. He hoped the House would therefore grant his request.—Granted, and on motion, Mr. Mumford was appointed in his place.

On motion of Mr. Thomas,

Ordered, That the letter from the President of the Senate, and Speaker of the House of Assembly, of the State of New York, enclosing resolutions of the Legislature thereof, which was read, and ordered to lie on the table, on the twenty-ninth ultimo, be referred to the committee appointed on so much of the Message from the President of the United States, at the commencement of the present session, as relates "to the aggressions committed within our ports and harbors by foreign armed vessels; to violations of our jurisdiction; and to measures necessary for the protection of our ports and harbors."

TUESDAY, November 3.

The SPEAKER laid before the House a letter from William Eaton, enclosing a communication from Hamet Bashaw Caramalli, Ex-Bashaw of Tripoli, stating the distressed situation to which he has been, and is now reduced, and praying relief from the Government of the United States, together with a representation from the said William Eaton, relative to the justice and equity of the said claim, for sundry reasons therein mentioned.

Ordered, That the said letter and communication be referred to Mr. THOMAS, Mr. SMITH of Virginia, Mr. HOLLAND, Mr. TAYLOR, Mr. MONTGOMERY of Pennsylvania, Mr. TAGGART, and Mr. LYON; to examine and report their opinion thereupon to the House.

The SPEAKER laid before the House a letter and memorial from Duncan McFarland, of the State of North Carolina, accompanied with sundry documents, stating his claim to a seat in this House, in the room of JOHN CULPEPPER, who hath been returned as the member from the seventh elective district of the said State.—Referred to the Committee of Elections.

Mr. COOK said, that, in the year 1799, a port of entry was established for the port of Thomaston, in the district of Waldoborough, which had been found altogether unnecessary, and the money paid to the surveyor was so much lost to the United States: He should therefore move the following resolution, to effect the purpose he had in view:

Resolved, That the Committee of Commerce and Manufactures be instructed to inquire into the expediency of abolishing the office of Surveyor of the port of Thomaston, in the district of Waldoborough, and that they report by bill or otherwise.

The resolution was agreed to.

MISSISSIPPI TERRITORY.

Mr. POINDEXTER said, that a memorial from the Legislature of the Mississippi Territory, was presented on the 27th of January last, praying for a revision and amendment of the land laws, and for an extension of the right of suffrage. He wished to refer these subjects to distinct committees, and for this purpose moved the following resolution:

Resolved, That so much of the memorial of the Legislative Council and House of Representatives of the Mississippi Territory, presented to this House on the 27th day of January, 1807, as relates to the several acts of Congress "regulating the grants of land and providing for the disposal of the lands of the United States south of the State of Tennessee," praying that the same may be revised and amended, be referred to the Committee on Public Lands, and that the said committee have leave to report by bill or otherwise.

Mr. PITKIN doubted the propriety of the proposed reference, empowering the committee to report by bill. He wished the subject of this memorial to take the usual course.

Mr. POINDEXTER said he would explain the reasons why he proposed this specific resolution. Had the gentleman heard the memorial read, he would have observed that it embraced a variety of subjects, a part of which would be properly referred to the Committee on Public Lands; but another part he should propose to refer to a select committee: for, if the whole memorial were referred to the Committee on Public Lands, it would be found that they could not act upon certain parts of it. That the whole might be in a state of progress, he thought it necessary to divide the subject. Should this resolution be agreed to, he should propose another, in relation to the right of suffrage.

The reading of the memorial was called for, which was read accordingly.

Mr. PITKIN said, that, from the information given by the gentleman from the Mississippi Territory, he was willing the business should take the course which he had proposed.

The reference was agreed to.

Mr. POINDEXTER then moved the following resolution.

Resolved, That so much of the memorial of the Legislative Council and House of Representatives of the Mississippi Territory, as relates to the extension of the right of suffrage in said Territory, be referred to a select committee, and that the said committee have leave to report thereon by bill or otherwise.

The resolution was agreed to, and Mr. BARKER, Mr. THOMPSON, Mr. KELLY, Mr. MORROW of Virginia, and Mr. POINDEXTER, were appointed the committee.

POST OFFICE AND POST ROADS.

Mr. THOMAS moved that the bill which was before the House last session, on the subject of the post office and post roads, and which was indefinitely postponed, with the petitions which had been presented on that subject, should be referred to the committee appointed to consider this subject at the present session.

Mr. DANA doubted the propriety of referring a bill of last session to any committee of this House.

Mr. THOMAS said that the Post Office Committee was empowered to report by bill or otherwise; that the bill proposed to be referred to them was the report of a former committee, and a part of the unfinished business of last session. The propriety of establishing different roads had been considered; and it would probably save the present committee much trouble, to have that report before them.

Mr. DANA wished, if the gentleman had any precedent in view, that he would produce it. For his part, he believed the proposition perfectly a novel one.

Mr. W. ALSTON said it would be improper to refer a bill of last session. What, he inquired would the committee do with a bill thus referred? They must dispose of it in some way. When a former report is referred to a committee, it may be made a part of the report of such committee; but they cannot make a bill of the last session a part of their report. The committee would doubtless cast their eye over the bill in question, without making any direct reference of it, and would make such use of it as they might think proper.

Mr. NEWTON proposed a division of the question. There could be no doubt of the propriety

of referring the petitions presented at the last session.

Mr. Thomas had no objection to modify his motion, and to omit the reference of the bill.

Mr. Ely could see no reason why all the applications made at the last session for alterations in the post roads should be referred to the committee of the present session. Many of those applications might not now find any gentlemen to support them. He thought the better way would be for members to bring forward such alterations as they may wish, without reference to what had taken place at last session.

Mr. Thomas withdrew his motion, and proposed a resolution instructing the Post Office Committee to inquire into the expediency of establishing a new road in a certain part of his district.

Messrs. Lewis, Swart, Storer, and Rhea of Tennessee, offered similar resolutions, which were agreed to.

Wednesday, November 4.

Mr. Nelson presented petitions from sundry qualified electors of Montgomery county, in the third Congressional district of the State of Maryland, and of that part of Frederick county included in the said district, praying, for the reasons therein stated, that the election of Philip Barton Key, the sitting member in this House for the said district, may be vacated and annulled; and that such order may be taken thereupon as may be agreeable to the Constitution and laws of the United States, and to the rules of this House.—Referred to the Committee of Elections.

Mr. R. Nelson did not know whether the motion he was now to make was in order, or not. He had been instructed to move that the memorial of Sir James Jay, presented at a former session, and referred to the Secretary of State, together with the Secretary's report thereon, and the report of a select committee upon that report, be now referred to a Committee of the whole House.

Mr. Southard doubted the correctness of referring the report of a committee of a former House to a Committee of the Whole. The usual mode was, to refer a report of a former Congress to a select committee; that committee would report to the House, and their report might be referred to a Committee of the Whole.

Mr. Nelson had no objection to any course the House thought proper. Perhaps a reference to a select committee would be best.

The petition and documents were accordingly referred to a select committee of five members, consisting of the following gentlemen: Mr. Jones, Mr. Stanford, Mr. Van Allen, Mr. Upham, and Mr. Heister.

Mr. Lewis said, that, as at the present period of the session there was very little if any business of national importance before the House, he took the liberty of reviving a subject of some importance to the people at large, and particularly interesting to the inhabitants of the District of Columbia. About four years ago, petitions were presented to the House praying for the erection of a bridge across the Potomac, and the subject had been revived at every session since. A bill had passed by a large majority in this House to effect this desirable purpose, but the other branch of the Legislature, from considerations which it was not necessary for him to detail, had postponed the bill. In order to bring this subject again before Congress, he moved that the petitions which had been presented for and against this measure, should be referred to a select committee, with leave to report by bill or otherwise.—Agreed to, and Mr. Lewis, Mr. Mosely, Mr. Swart, Mr. Bard, and Mr. Franklin, were appointed a committee.

Thursday, November 5.

Mr. George Washington Campbell, from the Committee of Ways and Means, presented a bill making further appropriations for the support of the Navy of the United States, during the year one thousand eight hundred and seven; which was read twice and committed to a Committee of the Whole to-morrow.

Mr. Findley, from the Committee of Elections, to whom were referred the certificates and other credentials of the members returned to serve in this House, made a report, in part, thereupon, which was ordered to lie on the table.

REVOLUTIONARY PENSIONS.

Mr. Dana said it was well known, that during the last Congress, an act was passed for the relief of persons claiming pensions. The object of the act was, to grant relief to some whose cases were not embraced by the former act, and to grant an increased allowance to others who had not, as yet, received sufficient. This act provides for taking depositions before the district judge, in cases where the claimants have never been placed on the pension list, as well as for examination of the claims of those who apply to have their pensions increased. Whether any compensation should be allowed for issuing commissions, or for making the examinations required, is not declared by the act. A difference of practice, he understood, had taken place. In some cases, commissions were issued gratuitously by the district judge; in other cases, these poor solicitors were obliged, from their small pittance, to pay for these services. If any compensation were to be allowed for this service, he thought it should be paid from the public treasury. Whatever might be the mode adopted, he wished it to be fixed by law. For this purpose he offered the following resolution:

"*Resolved*, That a committee be appointed to inquire what compensation shall be allowed for issuing commissions giving authority for taking testimony, or examining evidence relative to claims or applications under the act to provide for persons who have been disabled by known wounds received in the Revolutionary war, and that the committee have leave to report by bill or otherwise."

Mr. D. said he had intended to have had this resolution referred to the Committee of Claims, but finding the chairman of that committee op-

posed to it, he would move a reference of it to a select committee.—Agreed to.

CORRECTION OF THE JOURNAL.

Mr. GARDENIER said, that in examining the printed sheet of the Journal laid upon the table this morning, he observed that his name was altogether omitted in the yeas and nays taken on the question deciding the mode of appointing the standing committees. It was, no doubt, in the recollection of the House, that, in calling the names of the members, the Clerk had, by mistake, placed his name among the yeas instead of the nays, and he desired at the time to have the error corrected. But, instead of that being done, he found that his name was altogether omitted. In order to correct this error, he moved the following resolution:

Resolved, That the Journal of this House, of the 28th of October, be amended, by placing the name of Barent Gardenier amongst those who voted in the negative on the amendment proposed by Mr. Blount to the resolution appointing standing committees.

This motion occasioned some debate as a question of order. It was opposed on the ground of its being a dangerous precedent to suffer the Journal to be corrected several days after a question had been decided. It was said that, if this were to be allowed, the alteration might sometimes change the decision of a question. That any mistake in the Journal ought to be corrected immediately after the entries are read. That errors in the yeas and nays should be rectified at the time they are called over; and, that all other errors should be corrected on the morning of the succeeding day, when the Journal is read to the House.

On the other hand, it was contended that the member from New York had taken the earliest opportunity which had offered of correcting the error, as, until the printed Journal was laid upon the table, he had no opportunity of ascertaining it, the yeas and nays never having been read since he attempted to correct them, at the time the notes were taken; that he had a Constitutional right to have his name on the Journal on this question, and, therefore, demanded it; that the fact was known to be as stated, and that no danger could, therefore, arise from the precedent.

The motion was supported by Mr. GARDENIER, Mr. ELY, Mr. QUINCY, Mr. DESHA, Mr. PITKIN, Mr. WILLIAMS, and Mr. TALLMADGE, and opposed by Mr. SMILIE, and Mr. ALSTON. It was finally adopted, with a preamble moved by Mr. TALLMADGE, stating the grounds of the motion.

FRIGATE CHESAPEAKE.

Mr. QUINCY said, the House would recollect that when in Committee of the Whole on the state of the Union, some days ago, he submitted an amendment to a resolution of the gentleman from Virginia (Mr. DAWSON) which went to an inquiry into the circumstances of the attack on the Chesapeake, and the causes assigned for it, as well as the manner in which it was repelled. At that time two objections of some apparent validity were urged against this motion; the one was that it might have an improper effect upon a pending trial, the other was as to its form. To obviate these objections, he had modified the resolution, which he should now offer to the House.

Mr. Q. read his motion, as follows:

"*Resolved*, That the committee to whom was referred so much of the Message of the President of the United States as relates to aggressions committed within our ports and waters, by foreign armed vessels, to violations of our jurisdiction, and to measures necessary for the protection of our ports and harbors, be instructed to inquire into the circumstances of the attack made on the frigate Chesapeake in June last, and the pretexts or causes assigned for making it, and to report the same in detail to the House."

Mr. Q. would lay before the House his reasons for offering this resolution. He could not acquiesce in the course which had been given to that part of the President's Message which relates to the attack on the Chesapeake. He could not reconcile it with the sense of justice or with the honor of this House. He asked gentlemen to consider our situation in relation to this subject. A violent attack is made upon one of our public ships of war, in a manner undeniably hostile. A great degree of excitement has taken place in the public mind throughout the continent. Our newspapers have teemed with every species of information, a part of which has been correct, and a part incorrect; which has sometimes fallen short of the truth, and sometimes exceeded it; has been sometimes official, and sometimes inofficial. In this situation of things, the President of the United States deemed it wise and prudent to call an extraordinary session of this Legislature. We are now assembled. He has made a communication to us, and this attack is a striking feature in it. This is our situation. What have we done? The House has gone into a Committee of the Whole, taken up the Message of the President, cut it up into parts, according to Parliamentary custom; and we have taken as many of those parts as we pleased and referred them to particular committees; some of which are a kind of patchwork committees. In all of these references, notwithstanding it was the very object which occasioned the early meeting of the present session, no mention is made of the attack on the Chesapeake. The committee, which he proposed to instruct on this subject, had what related to aggressions committed within our ports and waters submitted to them generally, but they have no compass by which to steer; no prominent object is placed before them. He could not reconcile this manner of acting with his duty. He deemed it necessary to obtain a full developement of all the circumstances relative to this affair, in order that Congress, and the people at large, may form a correct judgment of our situation. The course adopted is not the course to gain the information so desirable. It is a course of Parliamentary ignorance, not a course of developement. It is a course of concealment. He spoke as to the general effect of measures, and not as to gentlemen's motives.

He inquired of gentlemen what method they

would pursue, if they wanted to understand any particular subject? Would they not refer it to a distinct committee, and not mix it up with extraneous matter? And if you give a committee two or three distinct objects to act upon, but wish them to attend more especially to one, it is proper to give them specific instructions to that point. This is the way to come at the proper understanding of a subject. But, on the contrary, if it were the wish of any member of this House to promote concealment, to prevent a knowledge of facts, the way is obvious. It would be to place three or four subjects together, and to suffer the committee to which they are referred to act as they please upon them. We know that committees thus left to themselves, will never do too much.

It was because the people of the United States wish to know something on this subject, that he made this motion. It may be said that this committee have already the power, and that they may make the necessary inquiries without this instruction. But it is the duty of this House to be certain that they will do so. Indeed, if the committee were now proceeding in this inquiry, this would be no good reason why this motion ought not to be adopted. If, without being instructed by this House, the committee should report the facts now called for, the honor of the act would rest upon that committee; whereas it ought to rest upon this House.

Perhaps it may be said, as on a former occasion, that every man, woman, and child, in the United States is acquainted with these facts; but what is known from popular report, or newspaper information, is not the kind of knowledge we want. We want facts from the proper authority.

An objection had been made to this course, that it would be casting a censure upon the committee. Not so; it would be no more than drawing the attention of an organ of the House to a particular subject. It may be objected to, because a negotiation is pending; but what is done by Congress, at this time, can have no effect on a negotiation carrying on across the Atlantic. The House is at present calm and tranquil, and this is therefore a proper time to undertake an investigation of the facts required. Let the negotiation terminate as it may, we shall never have a fair inquiry into these facts, unless we enter upon it at present. Suppose, said he, the negotiation has a favorable issue, and no inquiry has been made, is there a member present who will say the inquiry would then be entered upon? No, it would be said to be an old wound, which ought not to be probed, but forgotten. But suppose, on the other hand, that the negotiation should be abruptly broken off, and this House should be called upon to put the nation in hostile array, would that be a proper time for entering upon the proposed inquiry? Would the House be in a fit state for deliberating upon the facts required? Indeed, the subject appeared to him so clear, and the duty to bring forward this motion so impressive, that he could not refrain from making it.

Mr. Burwell said, he had hoped he should have been able to have satisfied the gentleman from Massachusetts, as to the attention of the committee to whom this duty was assigned; but after an expression which had dropt from him, he despaired of doing it. He would, however, inform the House that the committee to whom the subject was referred were engaged in a course of investigation on the very part of it now agitated, and had come to a determination to obtain, from the proper authority, a correct detail of the circumstances attending this particular attack; not content with this, they were about to call on the Government for a detail of all aggressions that had been committed within our ports and waters.

The gentleman has told us that the House should at least have the honor of instituting this inquiry. By the resolution on which this committee act, they were directed by the House to report on every aggression committed against the United States; they would no doubt perform their duty, and he did not see what more the House could now do, except they wished that every sheet of the journals should manifest their feelings on this occasion.

It had been observed, that perhaps this business would be smothered up, and that we might never have a correct account of it. Mr. B. said he would venture to assure the gentleman that the subject would meet with an ample examination, and that a few days only would elapse before the committee would lay before the House a full account of all aggressions or violations that had been committed. He, for his own part, thought it the duty of the House to examine into the transaction. Why, said he, should we shrink from any investigation? Has anything occurred which should prevent a complete disclosure? He hoped not; and that, although the gentleman was desirous the anxiety of the House should appear on each day's record, he would rest satisfied, and permit the committee to go on in the course which they had commenced.

The gentleman said, that the proper way to smother this matter up, was to refer the subject generally to a committee, who would only pay attention to such parts of it as they thought proper. If this were correct, did it not operate most strongly against his resolution? For, if he were afraid the committee to whom the subject is referred would not act on it, the proper mode would be to refer it to a select committee.

Mr. B. said he would not have risen on this occasion, had the chairman of the committee to whom it was referred been present when the resolution was proposed. He hoped, from every view of the subject, the House would conceive that the committee were discharging their duty, and that this resolution was unnecessary.

Mr. Blount said, that, at the moment the gentleman from Massachusetts had moved this resolution, he was in the committee-room, in the act of addressing a note to the Secretary of State on this subject, according to the direction of the committee, calling for a full and correct statement of all the facts relative to the aggression committed on the frigate Chesapeake. For the satisfaction of the gentleman, he would read the note which

he had written. [Mr. B. then opened and read the note.]

Mr. ALSTON doubted whether the committee had power to act on this particular outrage. He did not know the precise spot in which the attack on the Chesapeake was committed — whether within the waters of the United States or not. If not, it was possible that the resolution under which the committee was acting would not authorize them to make the inquiry proposed. If it would, the committee would no doubt do their duty, and make report of every circumstance of the transaction. If it should, however, be found, that the particular aggression alluded to by the gentleman from Massachusetts was not committed within our jurisdiction, a resolution something like the one proposed by that gentleman would be proper. He should wish the subject to be referred to a select committee. The proper way would be, to go into a Committee of the Whole on the state of the Union, and a motion to that effect might be made.

Mr. DANA thought with the gentleman from North Carolina, that the subject of the attack made on the Chesapeake was not referred to any committee whatever. The first resolution entered into appointed a committee, of which the gentleman from North Carolina (Mr. BLOUNT) is chairman, to inquire into "aggressions committed *within our ports and waters*," &c. From the Message of the President of the United States, it appeared that the Chesapeake had left her port. The attack on her was made in the main ocean, at the distance of more than a maritime league from the shores of the United States; and we had never, by any act of the Legislature or Executive, claimed territorial jurisdiction for more than a maritime league from the shore. It was understood that this attack was made at the distance of *three* leagues — clearly beyond any sea ever claimed as a territorial sea by the United States. It was not in the Gulf, or within any promontory or cape, so as to make it territorial. This being the case, the outrage must be considered as committed *at sea*, and therefore not yet referred to any committee. Shall we, said he, wholly omit to refer the investigation of this subject? When that broad question was presented to their observation, he trusted there would be no difficulty in deciding it. If there were any one subject which required the particular attention of Congress, it was this attack on the Chesapeake; if there were any subject on which the whole nation felt one sentiment, it was on this outrage; if there were any subject that could involve a question of war or peace, it was this; if there were any principle that needed no treaty stipulations to bind it, it was, in his view, that a national ship of the United States enjoys absolute immunity. He should think an acknowledgment of our independence as necessary in a treaty as a concession that our national ships ought to be free from search. This was a clear, prominent principle, perfectly distinct from any other. It admitted of no modification; there could be no question as to the exemption of a national flag from search. If the British Government assumed a different principle, he did not see a possibility of avoiding war. Admitting all the men taken from the Chesapeake to be Britons, they had no right to take a man from a public-armed ship of the United States.

The President of the United States had not undertaken to detail all the circumstances attending this affair; there was no necessity for it; he could only give us general information. This was sufficient to induce us to turn our eyes to the most serious results. Wishing for peace, as long as National Sovereignty and National Liberty can be preserved, we do not seek for war, but it is forced upon us. He wished to disclaim all invective, and should not go into an investigation, till the particular facts were disclosed; till this disclosure took place, he should say nothing of the commander of the ship which attacked the Chesapeake; but if he had acted without authority, his blood alone could atone for it.

In whatever light the subject was viewed, Mr. D. deemed it of so much importance, so strongly marked in the political history of our country, that it should be clearly and correctly understood. He, therefore, wished the inquiry to be conducted with all the attention due to the subject; for this reason he should vote for the resolution. He had no doubt but the gentlemen composing the committee in question would attend to this subject, but he doubted whether the inquiry was properly in their power, except that part of it which relates to violations of our jurisdiction. The British ships of war had remained in our waters ever since the commission of the act, in contradiction and defiance of the proclamation of the President of the United States, which still exists in full force. It ought, in his opinion, either not exist, or be obeyed; if they did not choose to obey it, and the means of compelling them were in the power of the United States, they should be taught obedience by compulsion. He conceived this subject already in the power of the committee: He concluded by saying that he should vote for the resolution, from a wish that the subject might be fully investigated.

Mr. BLOUNT observed, that whatever doubt might exist as to this subject's being referred to the committee of which he was chairman, there could surely be no doubt of its being referred to some committee. [Mr. B. read two of Mr. DAWSON's resolutions.] It must either be referred to this committee, or to the Committee of Commerce and Manufactures. If it be the opinion of the House that this subject ought to go to the last named committee, he should be glad to have the determination made.

Mr. SMILIE had no doubt that the resolution appointing a committee relative to maritime aggressions, of which the gentleman from North Carolina was chairman, included the attack on the Chesapeake. Indeed, it appeared, from the members of that committee, that they were proceeding with the subject, and, therefore, needed no directions as to their duty in that respect. This being the case, why is the motion brought forward? He could not help remarking that the

measure was very indecorous towards that committee. Were it ever known, Mr. S. asked, that business was taken out of the hands of a committee, before it is seen that they neglect to attend to it? There is no reason to believe the committee will not do their duty. Is not every member of that committee as much concerned for the welfare of this country as the gentleman from Massachusetts? And no one will say they do not possess the necessary capacity for making the inquiry.

The gentleman from Connecticut (Mr. Dana) has declared he never will consent to a treaty with Great Britain, except they give up the point of searching our armed vessels. He hoped the gentleman would go a little further, and take some steps for the security of our seamen. No doubt the British Government will disavow the conduct of their Admiral in the late outrage; but will this satisfy the people of the United States? No; something more will be necessary. Mr. S. could see no occasion for introducing so much warmth as the gentleman from Connecticut appeared to display, into this discussion. For his part, he thought the committee who had this subject under consideration was fully capable of investigating it, and he had no doubt would soon make a satisfactory report to the House. They could none of them be suspected of having any predilection for Britain. He had no doubt, if the time should arrive, which shall call for active measures against that country, the members of that committee and their friends will be found as zealous in defence of their country as the friends of the present motion.

Mr. Upham said, that it appeared to be the opinion of every gentleman of this House, that the affair of the Chesapeake ought to be inquired into. They differed only about the proper course to be pursued. A diversity of opinion exists as to the reference which has been made of the subject. He could see no objection to the adoption of this resolution, as it could produce only good effects. He thought all ought to agree in passing it.

Mr. Smilie wished to make one remark in reference to what had been said respecting the attack on the Chesapeake having been made without our jurisdiction. Wherever our armed ships are, there is our jurisdiction.

Mr. Dana explained what he had said respecting the formation of a treaty with Great Britain, which the gentleman from Pennsylvania appeared to have misunderstood.

The yeas and nays were called for, and agreed to be taken.

Mr. Alexander said, that notwithstanding he was opposed to the amendment offered by the gentleman from Massachusetts, some days ago, he was in favor of the present motion. It was nothing more than an instruction to a committee to inquire into an affair of great national concern. Notwithstanding he had little doubt that the first resolution (which had been read) was intended to include an inquiry into this subject, yet he thought it highly proper that this motion should be adopted. Though the attack upon the Chesapeake was made more than a maritime league from the shore, every armed ship, of whatever nation, is under the jurisdiction of the nation to which she belongs, wherever she may be. He was nevertheless in favor of making an inquiry into this affair. He was not for doing this, because he was of opinion that the committee would not do their duty. But he would have it done, that Congress might act upon it, and show to the world, that though we have suffered many abuses from the British nation, here we will take our stand. He did not think this resolution ought to be considered in an offensive light by the committee whom it went to instruct. He did not believe it was so intended.

Mr. Nelson would not have risen on this question, had not the yeas and nays been called; but this having been done, he meant to give the reasons which would govern his vote. He was opposed to the resolution on the table, not because he wished to have anything relative to the attack on the Chesapeake smothered; but because he considered the subject as already referred. The committee had already progressed in the business, and in two or three days the House might expect a report. He did not wish to enter into a resolution for the purpose of showing Great Britain what ground we are determined to take. He did not want to bully the British nation; he would be for showing them by acts, and not by words, what we would do. He never wished to legislate where legislation was unnecessary; and this subject having been once referred, he was not for referring it again. This kind of procedure reminded him of a master's treatment towards a negligent servant. He tells him to do a certain thing to-morrow; then calls him again, and cautions him again and again to do the same thing. And the passing of this resolution would be saying to the committee, "Take care you do your duty, Mr. Committee," after having been duly charged with it.

Mr. Sloan said, that indisposition had prevented him from offering his sentiments on this occasion before, and would now prevent him from saying much. Is not this subject already referred to a committee of this House? Have we any reason to believe this committee will not do their duty? Have the committee had sufficient time to make their report? They have not; and he took it for granted that the subject was properly before them. He never knew a resolution like the present brought forward, except there were good grounds for charging a committee with remissness in the discharge of their duty. He might go further, and inquire into the causes which produced this motion. He thought he could see them, and if his state of health would have permitted, he would have endeavored to explain them to the House. But he should satisfy himself with cautioning members against giving a vote which would cast an undeserved censure upon an important committee.

Mr. Newton did not mean to enter at large into this subject. He meant barely to go into the inquiry whether the affair of the Chesapeake was referred to a committee or not. Mr. N. read the

resolution making the reference, and insisted that this object was clearly embraced in it, and now before the proper committee. He differed in opinion from the gentleman from Connecticut, (Mr. DANA,) that the attack was made on the Chesapeake without the jurisdiction of the United States. Nor did he think any gentleman could assert this with any degree of certainty. He, who was much nearer the scene of action than the gentleman who had made this assertion, did not believe that this was the case. What he had to say as to the enormity of this attack, he should reserve for the proper time. At present, as the committee are already progressing with their inquiries on this subject, he was decidedly opposed to this resolution.

Mr. G. W. CAMPBELL would reserve his opinion as to the extraordinary attack upon the Chesapeake to a more suitable opportunity than the present. He rose merely to state his reasons for the vote which he was about to give. It appeared clearly to him that this subject came within the first resolution referred under the Message of the President. To come to a different determination now, he should consider as passing a censure upon this House for having neglected its duty in omitting to refer to a committee the most important subject contained in the Message, and that which had occasioned the present early meeting of Congress.

The House would not surely give the resolution this construction. The committee to whom it had been referred had not so construed it, and were the House to pass the resolution now before it, it would amount to a declaration that the committee had misconstrued the resolution referred to them, and proceeded to act upon a subject without being authorized to do so. He hoped, therefore, as there was no necessity for it, and as it would be an improper interference with the business of the committee, that the motion would be negatived.

Mr. GARDENIER regretted extremely that there should be any difference of opinion in respect to the resolution before the House. His surprise was still greater than his regret. The attack made on the Chesapeake by the Leopard had excited more sensation than perhaps any event since our Revolutionary war. It had induced the President to call Congress together at an earlier day than usual; and yet this subject had not been specifically noticed by any resolution of this House. A violation of our rights so prominent, he thought it the duty of the House to take up specifically, and act on it accordingly; to show that our feelings were in unison with those of the people of the United States on the one hand, and of the President on the other. He said it appeared to be the sense of the House that the subject should be inquired into. If it were already referred to a committee, he saw no objection to instructing this committee what course they should pursue. To the same committee had been referred a variety of subjects; and he could see no indecorum in telling that committee to what particular point their attention should be directed, though he had no doubt but the committee would do what they believed to be their duty.

It had been asked, would the House say that so important a subject as this had not yet been acted upon? He presumed the House would say the truth. If the subject was not referred, the House would say this, and their duty required that they should make a reference. The gentleman from North Carolina had said the subject was certainly before some committee; but he did not tell the House which committee he thought had cognizance of it. Certainly, if this aggression had been committed at so great a distance from the shores as had been represented, it was not within the power of the committee appointed under the first resolution. But the gentleman from Virginia had told them that he did not know that this violation was committed without the jurisdiction of the United States. If this afforded any argument, it would be, that, inasmuch as the House did not know where it was committed, it was proper to take measures to ascertain the truth. If it were committed without the jurisdiction of the United States, it did not come within the province of the committee who had the subject under consideration; and in order to make an inquiry, it was necessary to give them further powers. The resolution now before the House would prevent all difficulty on the subject; it tells the committee that it is the subject to which the House requires their particular attention; he thought it proper, therefore, in every point of view, that this resolution should pass. He hoped that there would be an unanimity of vote on this subject; that the House would proceed directly to the object for which they were summoned together, and would act as though they were engaged in one common concern. To this end, said he, let us determine to what committee the subject belongs; they will soon report, and we shall have the subject completely before us.

Mr. BLOUNT observed that the gentleman, just sat down, had misrepresented him. That gentleman had stated that he (Mr. B.) had not expressed an opinion to which of the committees the attack on the Chesapeake was referred. He had expressly stated, that the committee of which he was a member had entered upon the subject, and that at the moment when this resolution was brought forward, he was in the act of writing a note to the Secretary of State for information, and which he read in his place. The committee, nor any member of it, ever entertained any doubt on the subject. It was the first business on which they proceeded. He believed the members of this committee felt as desirous of pursuing this inquiry, and of laying all the information they could obtain before the public, as any gentleman who clamored upon it. There was no inclination in this committee to pass over this attack in silence, nor could they be justly charged with delay in giving their attention to it.

Mr. QUINCY disclaimed any intention of passing a censure upon the committee who were said to have this subject under consideration. He had no doubt their views were as pure and patriotic

as his own. He thought the House had not been sufficiently explicit in their reference of this subject. He knew it was the general opinion of the House that this business had been already referred; he had, therefore, modified his resolution to its present form. He saw no indelicacy in this. So far from it, a committee ought to consider it an honor to be instructed by this House: it was adding all the wisdom of the House to the wisdom of the committee. He had no intention of making any clamor on the subject, or of offending that committee. His own opinion, was that the attack on the Chesapeake was not referred at all; or, if it were referred, it was not referred to the committee, whom he proposed to instruct. It appeared that this committee and the Committee of Commerce and Manufactures had themselves entertained doubts on the subject; but after holding a conference had determined that the committee appointed on aggressions within our ports and waters should take it up. The confessions of gentlemen themselves appeared to call for a motion like the present, and he hoped it would be agreed to.

Mr. Fisk entertained no doubt, nor did the committee who had taken up the subject appear to have any, as to the reference of the attack on the Chesapeake. He, therefore, conceived it unnecessary to pass this resolution. The committee had already taken up the subject, and would soon be ready to report upon it. It would, therefore, be very improper now to come to a resolution to direct their attention to what they are already engaged upon.

The question was called for and taken—yeas 24, nays 93, as follows:

Yeas—Evan Alexander, Epaphroditus Champion, John Culpepper, Samuel W. Dana, John Davenport, jun., Joseph Desha, James Elliot, William Ely, Barent Gardenier, Robert Jenkins, Joseph Lewis, jun., William Milnor, Jonathan O. Mosely, Timothy Pitkin, jun., Josiah Quincy, John Rowan, John Russell, William Stedman, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, Jabez Upham, James J. Van Allen, and Killian K. Van Rensselaer.

Nays—Willis Alston, jr., Ezekiel Bacon, David Bard, Joseph Barker, Burwell Bassett, William W. Bibb, William Blackledge, John Blake, jun., Thomas Blount, John Boyle, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, George W. Campbell, Peter Carlton, John Chandler, Matthew Clay, John Clopton, Howell Cobb, Orchard Cook, Richard Cutts, Ezra Darby, John Dawson, Josiah Deane, Daniel M. Durell, John W. Eppes, William Findley, James Fisk, Meshack Franklin, Francis Gardner, James M. Garnett, Peterson Goodwyn, Edwin Gray, Isaiah L. Green, John Harris, John Heister, William Helms, William Hoge, James Holland, David Holmes, Benjamin Howard, Daniel Ilsley, Richard M. Johnson, Walter Jones, Thomas Kenan, William Kirkpatrick, Nehemiah Knight, John Lambert, John Love, Robert Marion, Josiah Masters, William McCreery, Daniel Montgomery, jun., John Montgomery, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, John Morrow, Gurdon S. Mumford, Roger Nelson, Thomas Newbold, Thomas Newton, John Porter John Pugh, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Matthias Richards, Samuel Riker, Ebenezer Seaver, James Sloan, John Smilie, Jedediah K. Smith, Samuel Smith, Henry Southard, Richard Stanford, Clement Storer, Peter Swart, John Taylor, David Thomas, John Thompson, Abram Trigg, George M. Troup, Philip Van Cortlandt, Archibald Van Horne, Daniel C. Verplanck, Jesse Wharton, Robert Whitehill, Isaac Wilbour, David R. Williams, Alexander Wilson, and James Witherall.

And so the said motion was rejected.

Friday, November 6.

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanying his report, and sundry documents, marked A, B, C, and D, prepared in obedience to "An act supplementary to the act, entitled 'An act to establish the Treasury Department;" which were read, and, on motion of Mr. Willis Alston, referred to the Committee of Ways and Means.

The Speaker laid before the House a letter from William Henry Harrison, Governor of the Indiana Territory of the United States, enclosing certain resolutions passed by the Legislative Council and House of Representatives of the said Territory, relative to a suspension, for a certain period, of the sixth article of compact between the United States and the Territories and States Northwest of the river Ohio, made the thirteenth of July, 1787; which were received and read, and referred to Mr. Jacob Richards, Mr. Kirkpatrick, Mr. Love, Mr. Deane, Mr. Davenport, and Mr. Parke, to examine and report their opinion thereupon to the House.

The Speaker laid before the House certain proceedings, together with a memorial of the citizens of Clark county, in the Indiana Territory, signed by John Beggs, their Chairman, and attested by Davis Floyd, their Secretary, in opposition to the letter and resolutions of the Legislative Council and House of Representatives of the said Territory, hereinbefore recited, so far as the same relates to the toleration and admission of slaves within the same.—Referred to the select committee last appointed.

Mr. Lewis, from the committee appointed on the fourth instant, presented, a bill authorizing the erection of a bridge over the river Potomac, within the District of Columbia; which was read twice and committed to a Committee of the Whole on Monday next.

Monday, November 9.

On motion of Mr. Parke,

Resolved, That a committee be appointed to inquire whether any, and, if any, what, alterations ought to be made in the laws fixing the salaries of the Secretaries of the Mississippi, Indiana, and Michigan Territories; and that they have leave to report by bill, or otherwise.

Ordered, That Mr. Bassett, Mr. Matthias Richards, Mr. Key, Mr. Bacon, and Mr. Sawyer, be appointed a committee, pursuant to the said resolution.

Mr. Boyle presented a memorial of Return J.

Meigs, junior, and others, witnesses on behalf of the United States, against Aaron Burr, attending the Circuit Court for the Virginia district, at the city of Richmond, in the month of September last, praying that an additional allowance to the compensation fixed by law, may be granted to the memorialists, for the reasons therein stated.—Referred to the Committee of Claims.

Mr. MUMFORD presented a memorial of the Mayor, Aldermen, and Commonalty, of the city of New York, for and in behalf of the Corporation and inhabitants thereof, praying that such appropriations may be made, and efficacious measures taken, for the protection and defence of the said city and its harbor, as to the wisdom of Congress shall seem meet.—Referred.

Mr. SMILIE presented a petition of the messengers of the Departments of State, Treasury, War, and Navy, praying an additional compensation.

Mr. SMILIE also presented a petition of Alexander McDonald, messenger to the office of the Register of the Treasury of the United States, to the same effect.

The said petitions were referred to the Committee of Ways and Means.

Mr. FINDLEY, from the Committee of Elections, to whom was referred, on the thirtieth ultimo, the memorial of Joshua Barney of the State of Maryland, stating his claim to a seat in this House, as one of the Representatives for the said State, in the room of William McCreery, who hath been returned as duly elected, made a report, in part, thereupon, which was read, and referred to a Committee of the Whole House on Thursday next.

Mr. RANDOLPH said, that at the last session, or the session before, a bill had been passed to defray certain expenses arising from the impeachment of Samuel Chase; that this bill had provided compensation for witnesses only. There were several persons, other than witnesses, whom it was incumbent on the House to compensate, as marshals who served process issuing from the Senate, for which there was no provision by law; there were also some services of a minor nature, which the managers had thought necessary, and which should be compensated. He therefore moved that the Committee of Ways and Means be instructed to inquire whether appropriations are necessary to defray the expenses arising from the impeachment of Samuel Chase.—Agreed to.

BRIDGE ACROSS THE POTOMAC.

Mr. KEY presented a memorial from the mayor and citizens of Georgetown, in the District of Columbia, against the contemplated bridge over the Potomac; which was referred to the Committee of the Whole, to whom had been referred the bill on that subject.

Mr. K. said, that the bill for the erection of the bridge was made the order of the day for this day; as the subject was particularly interesting to the citizens of his district, and he expected that to-morrow there might be documents laid on the table which would throw considerable light on the subject, he moved that the consideration of the bill should be postponed till Wednesday.

Mr. LEWIS wished that the subject should progress as fast as possible; but if additional documents were expected, he had no objection to the postponement; which was accordingly agreed to.

Mr. KEY moved that the memorial which he had just presented should be printed.

This was objected to by Messrs. LEWIS and UPHAM, on the ground that no petition or document on this subject had been printed, and it would be partial to order one only to be printed, and that they could not all be printed in a reasonable time.

The motion for printing was insisted on by Messrs. KEY, NELSON, and SLOAN, on the ground that all the other documents had been in the possession of the House for four years, who had become acquainted with their contents; that this petition contained matter entirely new, and which could not be understood from barely hearing it read.

The motion was negatived—56 to 46.

APPROPRIATIONS FOR THE NAVY.

Agreeably to the order of the day, the House went into a Committee of the Whole on the bill making an appropriation for the further support of the Navy Establishment during the year 1807.

On motion of Mr. G. W. CAMPBELL, the blanks in the bill were filled up in the following manner:

For pay and subsistence of officers and seamen	$74,750 29
For provisions	31,468 15
For repairs of vessels	142,884 61
For pay and subsistence of the marine corps	18,500 00
For clothing for the same	10,139 42
For medicines and hospital stores	1,263 40
For ordnance and military stores	310,554 60
For timber for the navy	87,500 00

The bill being gone through, a motion was made for the Committee to rise; when

Mr. QUINCY wished to ask a question of the chairman of the Committee of Ways and Means. In the estimate which they have received from the Secretary of the Navy, it was stated that the timber procured was "for building 73 gunboats;" the appropriation in the bill was "for the navy." He wished to know the reason for this variance; whether this timber was the same as that specified for the gunboats; if so, whether it was anything else than gunboat timber?

Mr. G. W. CAMPBELL said that he would endeavor to satisfy the gentleman from Massachusetts. Upon conversing with the Secretary of the Navy, the committee were informed that this timber was procured of such quality that it might answer any ordinary naval purposes; it was perhaps contemplated to be used for the erection of gunboats, but had been so selected that it could be appropriated to other purposes if necessary.

Mr. QUINCY said, the Committee would recollect that in the communication from the President of the United States to this House, he first states that he has made a greater provision of those articles of military stores, with which we

were not before sufficiently furnished; he then states that he had also incurred some expenses, unprovided for, for gunboats. Mr. Q. understood, by the communication from the Treasury and Navy Departments, that the present appropriation was for extraordinary expenses incurred for the Navy, other than those which come under the general name of military stores, and not including those expenses for gunboats. He asked of the chairman of the Committee of Ways and Means, merely for information, whether these extraordinary expenses were those which the President alluded to? Whether expenses, not produced to the House, were not yet behind the curtain? Whether they were the whole expenses that had been incurred?

Mr. G. W. Campbell said he could only answer to the gentleman's inquiries that, as the Message from the President of the United States had informed the House that certain extraordinary expenses had been incurred, and that estimates would be laid before them, and as such estimates had been laid before the House, the committee had conceived that these expenses were the same as those mentioned by the President, and acted upon them under that impression. They had no information before them from which they could inform the House whether there were other expenditures made, and they had not inquired whether the Message had reference to any other.

Mr. Quincy hoped the Committee would excuse him, if he proposed another question. The Committee would perceive that in the documents accompanying the bill, there was a statement of articles said to be purchased. He wished to know of the Committee of Ways and Means whether, in the common sense of the word, these articles were actually purchased and paid for, or only contracted for? If purchased and paid for, out of what moneys the payment had been made? Whether out of the public Treasury, from the private resources of the Secretary of the Navy, or from appropriations destined to other objects. The Committee would see the direction he wished to give to this inquiry; that the Committee might know before they voted this appropriation the course which had been adopted by the officers of the Navy Department.

Mr. Eppes said that neither he, nor any other member of this House could satisfy all the inquiries of the gentleman from Massachusetts. All the expenses provided for by this law, were not authorized by existing laws. Under the extraordinary circumstances which had occurred on the 22d of June last, at a time when the gentleman from Massachusetts himself had declared that the most violent attack which ever disgraced the country was made, the Executive had the choice of two courses: either immediately to convene the representatives of the people, or to demand reparation from Great Britain. As the last was the course pointed out by the laws and example of nations, it was deemed proper to postpone the meeting of the Legislature till it could be ascertained whether or not the outrage had been authorized by the British Government. In the meantime it was deemed necessary to provide for such exigencies as might occur. Under former appropriations, military stores had been procured, but all the stores thus obtained were found to belong properly to the War Department; and although the Department of War was sufficiently supplied with saltpetre, the Navy Department was not; and in case of any pressing emergency, it would have become necessary to purchase it at a high price. If it is was asked why saltpetre was purchased in preference to powder, it was because it had been found that powder could not be preserved in magazines; on this account it was thought better to purchase the ingredients for making powder than to purchase the article itself, as it could be made as fast as wanted. He believed that all the other items of the stores depended on a similar principle.

Under the existing law of the land the President was authorized to increase the Marine Corps to the number of 1004; under present circumstances he thought proper to exercise that power. No appropriation had been made for the purpose, but it was presumed that if the law provided the power of increasing this corps, it intended that they should be supported and clothed.

As to timber, the same reasoning would apply. It was thought essential to make preparations to guard our defenceless ports, and to prevent our cities from being burned or destroyed. With a view to this purpose it was thought proper to procure a quantity of timber for gunboats, and in order to enable the Legislature to give such a form to the preparations for the defence of our harbors as they should think fit, the timber was so selected as to suit any purpose. And if it should not be necessary to make use of this timber, it was well known that it could be sold without loss.

There had been no other expenses incurred than those rendered necessary by the situation in which the country was placed by the attack on the Chesapeake, and he believed the present bill included every additional expenditure that was made.

Mr. Quincy observed, that in making these inquiries his intention was not to cast any blame on the incurring of these expenses. His single object was, that he and the House might understand how the thing was done? He did not perceive that either the chairman of the Committee of Ways and Means, or the gentleman last up, had answered his question. One of them had detailed at length the proceedings since the affair of the Chesapeake, which Mr. Q. did not wish to condemn. He wished the House should understand in what manner this business had been managed. Situated as he was upon this floor possessing no more means of information than any other gentleman in the House, he understood that the articles had been purchased and paid for. Reasoning in his own mind on this subject, as he would on any subject in common life, he could see but three funds from which this $600,000 could be derived. The first fund was the Treas-

ury; it was certainly not obtained thence, as they all knew that the Treasurer cannot pay any money but by warrants, and the Secretary of the Treasury cannot issue any warrant except on an appropriation by law. This, then, was not the fund. The next arose from the Secretary of the Navy having in his hands appropriations of money destined for purposes authorized by law, which he may have applied to purposes which were not so authorized. He did not believe that there was so much more money than was necessary appropriated to any specific objects in the hands of the Secretary as would enable him to meet these additional expenses without affecting other appropriations.

Mr. Q. could then only suppose that the Secretary of the Navy had purchased and paid for those articles from his own private purse or that of some other person. He wished to know how it was? If he could not obtain information this way, he must try some other. He wished that the laws of the country should be so modified as to give all security to the individual who had taken on himself so great a responsibility.

Mr. G. W. CAMPBELL said he understood that the gentleman's objections at first were not against the appropriation or the propriety of making it; but now he wished to know whether a subordinate officer had actually paid this money, or whether it remained unpaid, and if paid, where the Secretary got the money to pay it. For himself, he considered it of no importance in what manner the money was paid, whether in dollars or in bank notes, or in any other way. The President had declared that he deemed it necessary to procure these materials, because appearances indicated an approaching rupture; if they had not been procured then, they might have become scarce, and perhaps could not be had at all. The materials were stored; the Secretary of the Navy had said that they were purchased. He conceived it immaterial whether the money was actually paid, or whether any individual had become responsible for it. It was not usual for the Committee of Ways and Means or for the House to go into minutiæ, or to inquire whether the money were paid in one way or in another. He asked the gentleman from Massachusetts if it was of any importance whether it were paid a month ago, or should be paid a month hence. The gentleman seemed to endeavor to propose some question that would produce difficulty; he professed to be in favor of the appropriation, and yet wished to throw some obstacle in the way to obstruct its passage. Even had the Secretary appropriated money to this exigency which had been otherwise appropriated, it was a customary measure. There was a time when this doctrine was advocated by the very gentleman who now seemed to oppose it. Mr. C. here read that part of the Message from the President to Congress which relates to this subject. He then contended that this proved that the articles spoken of were secured, and that the persons of whom they were procured were satisfied with the security of the Government for the purchase. If the propriety of incurring those expenses were brought into question, it might be necessary to give some answer to objections which should be offered. But as it seemed that the propriety of the measure was not questioned, he should go no further into the subject.

Mr. RANDOLPH said from what he had heard of the debate, it appeared to him, that some doctrines had been advanced by the gentleman on his left, (Mr. CAMPBELL,) which had not been heretofore considered as the true old Whig doctrine, the true Republican or Democratic doctrine. He had heard it stated, with some surprise, that the misappropriation of public money, or, in other words, to apply public money which had been appropriated for one object to another, was a matter of little importance, and unworthy of being made a question of inquiry in this House. He thought very differently. He had not heard much of the debate; but he had heard enough to convince him that an alarming—a damning heresy on the subject of politics, was likely to become prevalent in this body. Mr. R. said he would take the liberty of reading an extract from the first communication which the present President of the United States made to Congress, in which he recommends as prudent to multiply barriers against the misapplication of public money, by confining expenditures to express appropriations. Mr. R. read the passage to which he alluded, as follows:

"In our care, too, of the public contributions intrusted to our direction, it would be prudent to multiply barriers against their dissipation, by appropriating specific sums to every specific purpose susceptible of definition; by disallowing all applications of money varying from the appropriation in object, or transcending it in amount; by reducing the undefined field of contingencies, and thereby circumscribing discretionary powers over money, and by bringing back to a single department all accountabilities for money, where the examination may be prompt, efficacious, and uniform."

These opinions, said he, are at total variance with the doctrine now advanced—the present doctrine threatens a war of extermination to these opinions. Doctrines which were then held sacred, and on which he had always acted, and upon which he trusted he should always continue to act, appeared now to be deserted.

The gentleman from Tennessee, (Mr. CAMPBELL,) had stated that there was a time when certain gentlemen sanctioned the doctrines for which he now contends. It was equally true, he said, that there were others, who, contemporaneously, too, defended the principles for which he now contended. Does the gentleman from Tennessee consider us as political roundabouts to be changed by changing circumstances! If this be the fact, the sooner we know it the better.

Mr. R. called the attention of the House to an inquiry formerly made into the conduct of Gen. Hamilton, supported by a colleague of his now in the Senate. What was the crime alleged against the General? It was, that he had applied moneys appropriated for one purpose to de-

fray the expense of another. This was the charge which was then made, and supported with great ability.

Mr. R. allowed that the crisis which occasioned the extraordinary expenses in question was an imminent one. It was so critical, that Congress ought to have been immediately convened, in order that they might have given authority by law for these extraordinary expenses, and for adopting such measures as national feeling and national honor called for.

He confessed he felt extremely reluctant to vote large sums for the support of our degraded and disgraced Navy, for expenses, too, that had been illegally incurred. He had endeavored in vain to procure Gallatin on Finance, (which certainly ought to be in their library.) In that book he recollected a case exactly opposite to the present, where the President of the United States during the Pennsylvania insurrection, made use of money to defray the expenses incurred, which had been appropriated for a different object; but not having the book in his possession he would not venture to quote it, lest he should not do it correctly. Mr. R. concluded by saying, that when he rose, he did not mean to have said so much on the subject. If anything had escaped him grating to any gentleman's feelings, he hoped it would not be ascribed to an intention to offend; but he could not withhold his indignation on hearing such anti-republican and high federal public opinions, as had been supported by the gentleman from Tennessee.

Mr. Fisk said, that the bill now before the House went to provide for two objects; the one authorized by law, to wit, the increase of the Marine Corps; the other unauthorized, the procuring of timber and purchase of ordnance, &c. The Secretary of the Navy told them, in his communication and in his letter to the Committee of Ways and Means, that they had no stock of these articles on hand; and that saltpetre was wanting, and was then purchased at the lowest price; timber also had been procured, which was in the highest degree necessary for the defence of our ports and harbors. It would not be doubted, but the President had a right to make these provisions; he should have thought him deficient in duty if he had not done it. The President had thought it advantageous to lay in these stores, from the aspect of the times; it simply rested with the House to say whether this appropriation should be made or withheld. If, in paying this money or appropriating it, any fault had been committed by the officers of Government, if they had exceeded or violated their trusts, it would be time enough to inquire into it when it came properly before the House.

The gentleman from Virginia considered these doctrines as anti-republican; whether this were the case or not, the example had been set before. There was a case on record which would justify them. He alluded to a bill passed the first session of the ninth Congress.

He thought it therefore very immaterial whether the money had been paid out of moneys not appropriated, or out of moneys otherwise appropriated. It was conceived that Congress would justify the act by an actual appropriation. The only part of the expenditure which the House could object to, was that which related to saltpetre and naval stores; and he conceived these had been purchased with a due regard to the interest of the nation.

Mr. G. W. Campbell regretted very much that the gentleman from Virginia had either misunderstood him, or had misstated what had fallen from him. What he had said was this, and this only: that there might be a case which would authorize the application of money destined for one purpose to another; he was not prepared to say that this was such a case, but that such a case might happen. He felt surprised that these doctrines were stigmatized as anti-republican or federal, and that it had been said they were playing a game of political roundabout; the expression was not surely meant to convey an idea that they were now advocating a doctrine which they had once opposed? He had said that it was unnecessary to inquire whether these sums were paid or not; he had not said it was immaterial whence they had been drawn, if they were paid. He appealed to the Chairman, and to the House, if these were not the expressions he had used. He thought that the exigency would warrant the purchase of these materials. The President had told them those were extraordinary expenditures; hence he could not see how this question involved the principle of applying money destined for one purpose to another.

He felt as much reluctance to vote for large naval appropriations as the gentleman from Virginia; he never had been in favor of them, nor ever should be. He conceived that if anything could authorize such expenditures, this outrage did; and if the President had neglected to put the nation in a state of defence, the people would have had reason to complain of the inefficiency of Government. It was the duty of the President to adopt such measures as would have been authorized by Congress had they been sitting at the time.

The question now was, whether the House would sanction these expenditures or not: whether the exigency of the case would justify them? He had not expected that objections would have been made to the details of the bill, or that it would have become a question whether the money was actually paid by the Secretary of the Navy, or not.

Mr. Quincy said, that the question he had asked was so simple and direct that he could not see how the Chairman of the Committee of Ways and Means, or any other member, could have mistaken it. These articles had been purchased three months ago. Was it not clear that there was interest due on the purchase; how was it to be paid? If no interest was due, the moneys of the United States had been applied; if the interest was due, where was the specific appropriation to pay it? He asked these questions for information, and not with a design to create difficulty

As to the passage quoted by the gentleman from Vermont, with a design to show the similarity of the proposed measure to one formerly adopted, that was an expense authorized by law, for which a sum of money had been appropriated by law, but which was not sufficient to cover the whole expenditure; this was an expenditure which had not been authorized.

Mr. RANDOLPH said, if the gentleman from Tennessee had not before played a roundabout game, he appeared now to have done it. The gentleman might explain away what he had said, but he did not make his argument different from what he had understood it.

He thanked the gentleman from Vermont, (Mr. FISK,) for having referred him to a former report of the Committee of Ways and Means, in which he, as chairman of that committee, had made a similar application to the Secretary of the Navy for information to that now recommended, and to which a definite answer was given. He supposed the gentleman, by quoting only a part of the report, did not mean to garble it. [Mr. R. read the letter which he wrote to the Secretary for information, and his reply.] Mr. R. said at that session he reprehended the conduct of that officer, and in this very particular.

Mr. R. certainly understood the gentleman from Tennessee to say, that it did not matter whether the Secretary of the Navy had paid for the extraordinary supplies in question in bank notes or specie, or whether they were paid for at all. Now, he was of opinion that it did matter very materially. He reminded the gentleman that he did not appear in opposition on this occasion. He came into the House without knowing what question was before it. He was told the question was for the Committee to rise; but he had heard doctrines delivered which he considered subversive of opinions which he, and the republicans with whom he had acted, had always considered sacred. But he was advocating principles which the gentleman from Tennessse had opposed. He never recollected to have seen him in opposition; he meant to cast no such imputation upon him. Mr. R. said he did not mean to oppose the present appropriation; for, though he should do it reluctantly, he meant to vote in favor of it. But he felt the same reluctance in giving this vote, that he should feel in paying a gambling debt to a swindler. He considered the Navy of the United States disgraced, and he felt the same kind of reluctance in appropriating money for its support, which a master felt at paying the expenses of an unprofitable and disgraced servant.

Mr. SMILIE said, the gentleman from Massachusetts had inquired whether money had been actually paid for these specific articles, or contracts only made for them? On this point they could not satisfy the gentleman. He thought the only question on the passage of this bill was, would the House cover these expenditures by an appropriation, or not? They had a right to answer this plain question in the affirmative or negative; but it appeared doubtful whether they would answer it at all. He thought he perceived, from the questions of the gentleman from Massachusetts, an intention to cast some imputation of a criminal nature on the President of the United States, or on the Secretary of the Navy. Whether such criminality existed, or not, was not the question before the House. It had been customary, whenever the Secretary of the Navy or any other officer of the Government had made disbursements which were not authorized, to cover them by an appropriation. This question, therefore, did not necessarily involve any inquiry of the kind which had been made.

He did not mean to point out the propriety or impropriety of the arguments which gentlemen had used. If they believed that the conduct of the Executive had not been correct, they would not vote for the appropriations. It had been said that Congress should have been convened immediately; it was true the President had a right to call them sooner, if he thought the interest of the country required it, but he had postponed the meeting till the fermentation should have subsided, and an answer might have been received from Great Britain to the demand which had been made for reparation. If he had convened them so early as the month of August they could not have come here to legislate without danger to their health.

Mr. S. was in favor of specific appropriations, and against the practice of drawing money from the Treasury without appropriation previously made; but every gentleman knew that there were cases in which this form must be dispensed with, and in this instance he thought the circumstances of the case justified the measures adopted.

Mr. DANA perceived it was not in the power of the Chairman of the Committee of Ways and Means to answer the inquiries which had been made, because he would not permit himself to indulge a thought that he possessed the desired information, and yet withheld it. He thought that the want of this information might lead to a misstatement of facts; and though he did not pretend to be in the secrets of the Cabinet, he was inclined to the opinion that a full disclosure would be more satisfactory to the House, to the Executive, and to the people. If this were made, they would be denied the liberty of roving at will, conjecturing as they chose. But, said he, are we not called upon to grant money, and shall we not know for what purpose? Does the President call upon us for an appropriation, and shall we not have leave to inquire what expenses it is intended to cover? The very act they were about to pass was declaratory of their approbation of the conduct of the Executive; they were therefore entitled to information on the subject. As the representatives of the people, the peculiar guardians of the public Treasury, they were entitled to it.

He believed that no blame should attach to the Secretary of the Navy or any other person on account of this expenditure; but in every case in which money had been expended without order, the least that could be expected was a fair disclosure of the circumstances attending the transaction. Could not the Executive and departments trust to the candor and liberality of the House? Did they

refuse to confide in the House? Mr. D. was desirous of the fullest information, which he thought would redound more to the credit of the Administration than this silence on the subject.

Waiving the right to make these inquiries, he thought then, two questions occurred for consideration. The first was the great broad question, whether or not it was proper for Congress to make appropriations to cover expenditures of public money not previously authorized by law. Prior to the year 1801, expenses were incurred without the express sanction of Congress; they were incurred with a view to the public service in case of emergency. It was then discretionary with Congress either to approve or disapprove this conduct; if they approved it they passed a bill making an appropriation to cover the expenditure. In 1801, from the highest authority, a doctrine the reverse of this was avowed; that it was a part of political prudence to discountenance and disallow all applications of money to purposes not authorized by law; so that if money destined for one object was applied to another, or money unappropriated was applied to any object without being previously authorized by law, this doctrine went to disallow it. In 1807, when public expectation was directed to the Executive, it had been thought proper to incur certain expenses for insuring the public safety. A public officer, who in a moment of public exigency undertakes to purchase supplies, may rely on public support. If the Legislature condems the procedure, the officer must bear the loss. Would you, said Mr. D. had you assembled at this time, with a knowledge of all the existing circumstances—would you have authorized these expenses to be incurred? This was the fair question, and was presented to them under favorable circumstances for determination. In 1801, this doctrine had been contradicted, disavowed; it was with satisfaction he now observed that practice taking place under high authority which had before been denounced. He felt highly gratified with this change, and certainly would not reproach gentlemen for it; they had learnt wisdom by an experience of six years, which had taught them the error of their doctrines; the privilege of being wiser on this day than five years since ought not to be denied. He declared then, that as respected the general principle, he concurred decidedly with the Executive.

The second question was on the particular subject: should they advocate the expenditures for these particular purposes, supposing that they had perfect information on the subject? As respected the subsistence for seamen, repairs for vessels, &c., they were previously authorized by law. The President was authorized to increase the number of seamen, but the appropriation already made would not cover the additional expense. It was beyond all question, that as this power had been given to the President, Congress were pledged to cover the expenditure. The next article was, for pay and subsistence of the marine corps. There was a clear power vested in the President to increase this corps; and as Congress had authorized that increase, they were pledged to defray the additional expenses. Passing by ordnance and military stores, the last article was for timber for the Navy. He could have wished that this article had been something more explicit; he apprehended it was timber for gunboats; if so, on that subject there seemed to be some questions. He found in the estimate of the naval expenditures, timber for seventy-three gunboats; he did not doubt but they might be useful; but they were not designated by name in the bill, and should they be found to be useless, the stigma might be cast on the Navy generally. As respects this timber, for gunboats, he asked, had there been any authority given to the Executive of the United States to purchase such timber? At the last session of this body, there was before the House a bill authorizing, (among other objects) the building a number of gunboats, but which failed of success. A motion was made by himself to strike out the words "for building gunboats," so as to authorize the provision of timber for general naval purposes. Against this motion he found a long list of names, for it had no high authority to recommend it. They could have the whole number of gunboats that were necessary built in one month, even if it were a thousand. For himself, he was now clearly in favor of timber for gunboats, not because he considered them an adequate defence for the United States, but as they might be useful in some cases to a certain extent, as a subordinate part of a system of defence; this was their true character. Hence it was that the erection of gunboats gave so much amusement to mischievous tongues and editors, when considered as forming in themselves a system of defence. He was clearly in favor of pursuing the same plan as that for which he had before voted; and the gentlemen who had condemned the measure proposed by himsef last session, might vote for the same now, as it was backed by higher authority.

Mr. Thomas wished the Chairman to state the question before the House, that gentlemen might see how far they wandered from it.

The Chairman stated the question to be on the rising of the Committee in order to report the bill.

Mr. Newton said, he rose merely to state to the Committee a matter of fact; and when he had ctated that fact, he thought he would be justified in the inference he should draw from it. Considerable preparations had been made in the part of the country which he had the honor to represent, in consequence of the outrage which had been committed. He knew it to be a fact that citizens of that district had furnished articles for the service of the United States, and rendered important services, and that they were now anxiously waiting for the passage of this law, that they might receive the moneys which would become due to them under its sanction. This being the fact in his district, he had no doubt the same fact existed in other parts of the United States. He did not know that the Executive of the United States had purchased or paid a cent for saltpetre; but as the United Staaes were indebted to citizens in his district, the probability was that they were indebted in other parts of the Union.

Mr. G. W. CAMPBELL said he would make but a few additional remarks on this subject; the Committee of Ways and Means had conceived they had done their duty by taking the only means in their power to acquire information. He was surprised that there could be a division of sentiment among the members of the House with regard to the manner of making this appropriation. He declared that he still held the same principles he had always maintained, so far as respected specific appropriations; but a case might happen in which they might be dispensed with, as cases of exigency required extraordinary remedies. After making some remarks on what had been said respecting heretical doctrines, and deviations from republican principles, he assured the gentleman on his right (Mr. RANDOLPH) that he was the last whose political principles he should follow. The gentleman from Connecticut had said the House were called upon to make appropriations, but had not been specifically informed what expenditures they were to cover. The objects of the appropriations had been detailed to the House by the Secretary of the Navy, and by members on the floor. It did not appear to be the desire of the gentleman to know for what particulars the expenditure had been made, but whether they were actually paid for or not; this he must say, appeared to him perfectly immaterial, and that if the occasion was sufficient to justify the expenses incurred, the appropriation was proper and ought to be made. He thought the taking money from an appropriation to the one object, and applying it to another, might be admitted in such an emergency; which might also warrant the Executive in incurring expenses not authorized by law.

Mr. RANDOLPH observed, that he understood the gentleman from Tennessee to say, that he should not apply to him for instruction in political principles. He would assure the gentleman he was one of the last persons he should wish to instruct: and when he wanted pupils, he should not solicit him to become one. Mr. R. said he had been involved in this debate prematurely. He had heard the order of the day stated from the Chair, and no person called it up. He then walked out of the House in search of a book; from the extraordinary echo of this large room, there being great difficulty in hearing, and being heard, when he returned he had not distinctly understood the question.

He wished to be understood as giving his vote upon the same ground with his friend and colleague who had just sat down. The expense having been incurred by the patriotism of our citizens, it would be an indelible disgrace not to discharge it. But in doing this he did not mean to commit himself as voting for a navy, or the expenses arising out of a navy, except in a case such as the present, where a debt had been actually incurred.

The gentleman from Pennsylvania had agreed with him perfectly in professions; he had therefore nothing more to do than to ask him, as he had heretofore done, to act with him. This gentleman, as indeed every other gentleman, had taken a wide range on this question. In the first place, the expenses were not authorized by law; and inquiry had been made why they were incurred without authority, and a reason assigned that there was a great crisis—an insult had been received which every man must feel—in short, the circumstances were such, that the Legislature ought to have been convened. The gentleman from Pennsylvania had urged as a reason for their not being convened, that our health might be endangered by coming here so early in the session. He wished his old friend from Pennsylvania, he hoped he might be permitted to call him so, would convey them to a place where they might be convened without danger. Another reason was, that they would have been convened at a time when they would have felt a deep and particular sense of national indignity. Mr. R. said he thought they ought to have been summoned then, and not to have suffered this impression to be weakened. There was a time when that gentleman and some other gentlemen, in discussing a subject which they called British aggressions, were as warm as he was disposed to be temperate; now that gentleman was as temperate as he was warm. Which had the better reason? He deemed it to be the interest of this nation to preserve peace with all mankind; to hold the balance of humanity with a steady hand. He had before deemed it the interest of the country to be at peace with Great Britain for reasons which he had before urged, on that floor, and which he would not state again; but now, *tempora mutantur*. The nation had received a blow. The President had been insulted in his palace by the Minister of one foreign Power, and now had received a blow on his cheek from the navy of another.

Mr. SMILIE said that he was perhaps more temperate than his friend from Virginia; but he hoped when that gentleman arrived to his period of life, he would be equally temperate with him. Yet he did possess a temper, and could display it when our violated rights were the subject. Mr. S. then alluded to an ancient nation, who were wont to discuss great national questions twice, once when they were drunk, that they might not want spirit, and once when they were sober, that they might not be deficient in prudence. And he did believe, however others thought, that prudence required a temperate course, and that they ought not to have been under the immediate influence of passion when they took their seats on this occasion.

The question was now taken on the rising of the Committee, and carried. The amendments, agreed to in committee, were all agreed to without a division, excepting that making an appropriation for timber, on which the House divided—ayes 103; when the bill was ordered to a third reading to-morrow.

TUESDAY, November 10.

APPROPRIATIONS FOR THE NAVY.

An engrossed bill making further appropriations for the support of the Navy of the United States,

during the year one thousand eight hundred and seven, was read the third time.

Mr. J. Montgomery said, that as the yeas and nays had been required, he should exercise the right of assigning reasons for the vote he was about to give. This bill provides for extraordinary expenses incurred in the Navy Department since the 22d June last. These extraordinary expenses had resulted from the cowardly attack committed by the Leopard on the Chesapeake. This act, marked with such daring and atrocious circumstances, had excited the detestation of every American—one sentiment, on this subject, pervaded the Union. The President of the United States had adopted firm, energetic, and dignified measures on the occasion; amongst others, those which had occasioned the expenses for which this bill provides. He had heard no complaint that the Executive was defective, either in prudence or energy. He was authorized, and he exercised the authority vested in him by law, to call out the marine corps to its full complement. He had exercised the authority given to him by the act of 1806, in preparing the gunboats for service. The sense of the nation, and the exigency of the times, called upon him to do so. Other expenses, incident to calling out the marine corps, and manning gunboats, were comprised under the different articles of clothing, &c. These extraordinary expenses, the President was authorized to incur, the state of the country justified him in exercising that authority, and Mr. M. was of opinion that the honor of the nation called upon the House to make the appropriation. Then, as to these extraordinary expenses which had been incurred, there could be no difficulty; their honor was at stake for the payment. There was another item, which, he presumed, would meet with as little difficulty as any other. He was instructed to say, as a member of the Committee of Ways and Means, that the provisions specified in the bill were used by the militia called out for the protection of the port most in danger. Was there any member in the House who would hesitate to make an appropriation of $31,000 for that purpose?

At this important juncture, when our country was in danger, the Executive had examined the state of the several Departments. In the War Department, there were sufficient supplies of military stores; in the Navy Department there were none, except a few pounds of powder. At this alarming crisis, the country being threatened with war, the people looked up to the Preident for energetic conduct. He did not hesitate to make expenditures to supply these necessaries for the Departments. Of the Navy Department there was more required than of the War Department, because the outrage had been committed on the ocean. What more prudent, more correct conduct than that of the President could be wished, or what more could the people expect, than that he should have made these necessary provisions of ordnance, and military stores, and timber for gunboats? The President had judged it expedient to make preparation; and the state of affairs had called for a warlike attitude; for, said Mr. M., we have learned from our departed Washington that, to command peace, we must be prepared for war. The President had acted upon this principle, which the House, no doubt, would approve. There was no law at that time, nor had any law yet been passed, to authorize the purchase of these articles; but the President of the United States, when his country was in danger, hesitated not to take upon himself the credit and proper responsibility. Upon these items, what was the language of the President of the United States, contained in the Message delivered to us? Strong, and forcible, and clearly showing the necessity for incurring these expenses: "The moment our peace was threatened, 'I deemed it indispensable to secure a greater pro-'vision of those articles of military stores with 'which our magazines were not sufficiently fur-'nished. To have awaited a previous and special 'sanction by law, would have lost occasions which 'might not be retrieved. I did not hesitate, there-'fore, to authorize engagements for such supple-'ments to our existing stock, as would render it 'adequate to the emergencies threatening us, and 'I trust that the Legislature, feeling the same 'anxiety for the safety of our country so materi-'ally advanced by this precaution, will approve 'when done, what they would have seen so im-'portant to be done, if then assembled."

Mr. M., hoped his trust was well founded; that the Legislature, feeling the same anxiety for the public safety so materially promoted by this precaution, would declare that this was what they would have done had they been in session. He asked, had the President of the United States passed over this great emergency, and failed to make these preparations, ought he not to have been censured for a neglect of duty? As these articles, therefore, had been purchased because the interest and safety of the country had required them, and the expenses had been incurred for the public safety, the House could not hesitate to give their sanction to the appropriation.

It had been asked by a gentleman from Massachusetts, whether these articles were actually paid for? If paid for, out of what moneys had the payment been made? The President had said that he had authorized engagements for these articles; the Government was pledged for them; and the House were as strongly called on, by faith and honor, to make an appropriation for them, as they were bound to do in the case of the marine corps.

Mr. M. said it had been asked by another gentleman, perhaps from Connecticut, whether the timber mentioned was for general naval purposes, or intended for gunboats only? At this important crisis, when hostilities were menaced, it had been thought prudent to lay up a stock of timber for building gunboats, and it was accordingly done. But, in laying it up, it had been contracted for, and prepared, in such a manner as to answer any naval purposes. If our differences should be amicably settled, and it was not required that gunboats should be erected, the material would still be on hand for the use of the Navy.

It had been stated, he believed by a gentleman

from Virginia, that appropriations had been anticipated—that this was not the language held by the President of the United States, or these the principles defended by him in his first communication made to Congress in 1801. Mr. M. said he admired the principle laid down by the gentleman. Appropriations should never be anticipated but in extreme cases. The principle was, in general, correct. But, he would ask the gentleman from Virginia, who had taken this ground yesterday, if a case could not occur in which it might be departed from? He would ask any gentleman, need there exist a stronger case than the present to justify such a departure? He believed not.

They had been told by a gentleman from Connecticut, that, in the manner in which they were now acting in making appropriations, they were justifying the measure upon arguments resorted to by the former Administration. God forbid, said he, that we should take any of the principles of the former Administration for our rule of conduct. The present measure stood on firm ground. The exigencies of the times had justified the anticipation, and not the example of the former Administration.

They had been told by a gentleman, yesterday, that our Navy had been disgraced by this outrage. True, if the officer of the degraded vessel, instead of a verbal answer from the mouth of his trumpet, had sent a metal one from the mouth of his cannon, the honor of the Navy of the United States would have been preserved. That officer, and his conduct, were now under investigation; but, from the courage, character, and patriotism of the other officers of our Navy, the country might be assured that, if opportunity offered, they would retrieve its reputation.

It had been said that the Government had received two marked insults from foreign Powers. He presumed one case alluded to was that of the Spanish Minister. If he was wrong in this idea, he wished to be corrected. This Minister began to show his Spanish airs to our homespun Government. He was informed that a demand would be made for his recall. If it should be thought, that I am incorrect in this, said Mr. M., resort to the Department of State, where the facts may be obtained. What was the conduct of this Ex-Minister? Did he dare to pesist in this insolence? No! he meanly solicited our Government not to write on, or represent his conduct to the Spanish Government. Our Government granted his solicitations. If they got rid of him, it was immaterial in what manner. After he had thus obtained his point, what was his conduct? He came within the City of Washington, contrary to the understanding which had taken place. Did the Government then put up with his behaviour? He received, on the contrary, an intimation that his company would be dispensed with. In the course of a few days he slunk off to Philadelphia. Under such circumstances, he presumed no American would feel the dignity of the nation injured in this case.

In the other case, it had been said, we had received a blow. And a blow only? No! murder had been committed. The reeking blood of our fellow-citizens, and the insulted dignity of the nation, called for satisfactory retribution or speedy retaliation. If retribution is refused, then the Constitution did not vest the power in the President of the United States to resent the injury—it did vest it in the Congress of the United States. If such a crisis should take place, they would meet it with energy and firmness, and use every effort to efface the insult.

The present measure, now under consideration, said Mr. M., is the first defensive measure presented for our determination. If we give this measure a quibbling, quirking, or reluctant affirmative, the people will be disappointed in their hopes. I have no apprehension that we shall do so. I believe the contrary. I have no doubt but that the patriotic characters, here called together, on the exigency of the moment and to whom are intrusted the honor of the nation, will realize all the wishes of the people.

Mr. M. concluded by saying that, feeling conscious of the rectitude of his intentions, as far as his feeble abilities would permit, he had discharged his duty to his country, to his constituents, and to himself.

Mr. RANDOLPH hoped the time would come, and that very soon, when we should have an opportunity of going into a regular discussion of the points touched upon by the gentleman from Maryland, and of some others. He trusted that, in the first place, the question would be regularly brought before the House—and the late experiment had thrown considerable light upon the subject—whether the United States ought to maintain a Navy, and to what extent? Whether an establishment which for years had proved a moth in the public purse, and which, when the exigency of the moment called for its last exertions, had proved only a conductor of dishonor to the nation, deserved to be cherished with the tenderness, and supported at the expense, which had hitherto been lavished upon it? He hoped this question would be fairly met and as fairly decided; for, strange as it might appear, this great point had never been directly settled since the present Administration came into office, but had heretofore been determined in an oblique, collateral way. He hoped, too, that the question would be discussed, how far the present state of our political relations abroad had grown out of the proceedings of the memorable session of 1805-'6, and how far—perhaps this might prove the only opportunity for such a discussion—the measures taken by the Executive upon the capture of the Chesapeake comported with the wishes and expectations of the people, and with the maxims of a sound, dignified, and enlightened policy.

The gentleman from Maryland, who had just sat down, allowed that the positions contended for yesterday, in opposition to the practice of contracting public debts or expending public money illegally, were, in the general, good, but seemed to consider them liable to many and great exceptions. On this subject he would produce an authority which would show what had been the

opinion of the Republican party, when they were out of power, and how far it supported the doctrine which gentlemen had now undertaken to defend. Here Mr. R. quoted Gallatin on the Finances of the United States, page 81:

"Another irregularity has once taken place upon an extraordinary occasion. Although the President of the United States was authorized to call out the militia to suppress insurrections, no moneys were appropriated for that service. When the Western insurrection took place, until Congress had covered the expenditures of that expedition by an appropriation made only on the 31st of December, 1794, the expenses were defrayed out of the moneys appropriated for the Military Establishment. Yet, even the principle, by which the specific appropriations for the several objects of the Military Establishment have been considered as a general grant for the whole, could not authorize the application of a part of that grant to the expenses of that expedition. No further discretion had been claimed by virtue of that principle than that of indistinctly applying the whole sum appropriated by law to any of the objects enumerated and specified under distinct heads in the law itself. But, as the militia called out to suppress an insurrection make no part of the Military Establishment, the expenses attending such a call were not among the various objects enumerated in the law making appropriations for the Military Establishment. The moneys drawn from the Treasury on that occasion were paid out of a fund appropriated for other and distinct purposes; they were not drawn agreeably to the Constitution, in consequence of any appropriation made by law. It might be a defect in the law, authorizing the expense, not to have provided the means; but that defect should have been remedied, by the only competent authority, by convening Congress. The necessity of the measure may, in the mind of the Executive, have superseded every other consideration. The popularity of the transaction" (and he might have added, of the agent) "may have thrown a veil over its illegality, but it should by no means be drawn hereafter into precedent."

Mr. Randolph believed that the opinion which he had just read would bear him fully out in the principles which he had laid down yesterday as those on which the old Whig or Republican minority in Congress had acted, on which they had specifically, as well as virtually, pledged themselves to the nation to continue to act, and which, when they deserted, they deserved the reprobation of every honest mind. Can any man pretend to say that the Western insurrection, in the very infancy of this Government, presented a case of less public exigency than the capture of the Chesapeake? And yet the then President of the United States, for having illegally defrayed the expense of that expedition, instead of convoking the Legislature and acting under its authority, had deservedly received the censure—not of the multitude, for they were with him—but of the thinking few. He was condemned by the reflecting part of the community, and the system on which he acted, and which his successor had subsequently pushed to the most extravagant lengths, was finally arrested by the public voice.

In a preceding part of his work, (page 79,) the Secretary passes some deserved strictures on the practice of mingling appropriations:

"The appropriations heretofore made for the Military Establishment have been subdivided into a number of separate heads, making specific and distinct appropriations for the pay of the Army, for its subsistence, for clothing, &c.; and it was supposed that the moneys thus distinctly appropriated were respectively applied to the specific objects, for which they were appropriated. It, however, appears by a letter from the Secretary of the Treasury of May, 1796, that by far the greatest part of the expenditures for the military department are found by experience to be unsusceptible of that particular distribution which is observed in the issues of moneys appropriated to other objects, and that appropriations for military purposes ought to be considered as a general grant of such sums as the public service is found to require, to be issued according to exigencies, and applied and accounted for pursuant to law."

The House will recollect, that at this time, we had not that other department, which has since proved yet more unsusceptible of any economical regulation, or legal control. The Secretary of the Treasury goes on to say:

"It would seem that, if those appropriations are considered by the Treasury Department, as general, of which grants, to be issued according to exigencies that that or some other Executive Department is to judge, and if, therefore, the moneys specifically appropriated to one head of service are applied to another head, they are not applied and accounted for pursuant to, but contrary to law. Such a mode is undoubtedly liable to great abuses; it deceives the Legislature, who, when appropriating one hundred thousand dollars for the defensive protection of the frontiers, did not think that the Treasury would assume a power to apply them to the Quartermaster's, or any other department. It deprives the Legislature from any control, not only over the distribution of the moneys among the several heads of service, but even over the total sum to be expended. For the million and a half of dollars appropriated for the annual support of six thousand men, the nominal establishment, may be spent in the same time, and in fact has actually been expended within fourteen months for the three thousand five hundred men who constituted the effective establishment. The same abuse has, for a considerable time, prevailed in England, where it has, at several periods, been taken notice of, and did lately produce a motion of impeachment against the Ministers.

"On the other hand, it is impossible for the Legislature to foresee, in all its details, the necessary application of moneys; and a reasonable discretion should be allowed to the proper Executive Department. The most proper way would perhaps be, not to enter into so many details; not to make specific appropriations for every distinct head of service, but to divide the general appropriation under a few general heads only, allowing thereby a sufficient latitude to the Executive officers of Government, but confining them strictly, in the expenditure under each of these general heads, to the sum appropriated by law."

The two cases noticed by Mr. Gallatin, were the mingling or lumping of appropriations, and the expenditure of money on objects authorized by law, but for which there was no appropriation. The present case not only embraced those two, but another, and much stronger case than any which Mr. Gallatin had imagined—the expendi-

ture of money not only without an appropriation, but upon objects not previously authorized by law.

But, Mr. R. said, it was asserted that the articles were not paid for, that contracts only had been made for them. So much the worse. In point of principle there was no difference between contracting an illegal debt, and making an illegal disbursement of money. But in point of economy, there was a great difference against the former. If these articles had been bought with cash they would have cost less. Merchants all over the world looked to *profit*. Would they deliver upon contract to be paid some months hence, provided Congress approved, their saltpetre, for instance, at a cash price, at a time, too, of imminent danger of war, and when every article of military equipment must be expected to rise enormously in value? He could not see in such a procedure (granting the fact to be so, of which, however, he doubted) a theme for eulogy on the economy of men in office, or any mark of promptitude to provide for the public defence, which could be done effectually by the Legislature alone.

He put it to the candor of the gentleman from Maryland to say whether, if the President had pursued a different course—had met the public expectation and convened Congress—he could not have found in the respect shown by the Executive for the laws, and the Constitutional rights of that House, by a prompt recurrence to the only source of legislative authority, a more ready and natural defence of his conduct than that which he had laboriously but fruitlessly taxed his ingenuity to produce. The gentleman's argument proved too much. The more he magnified the danger of the crisis, to justify an illegal and unconstitutional expenditure of the public money, the more clearly did he demonstrate the necessity of convening Congress. But, sir, when the call for an immediate preparation to meet the emergency of the times, is dinned into our ears, will any man pretend to say that such preparation has been made; that we are now prepared for war? Could any gentleman bring himself to believe that a few pounds of saltpetre had put the nation in a posture of defence, or that we had any other preparation than that which stout and willing hearts afforded? The measures which had been taken were, as far as respected a violation of the Constitution and laws, certainly efficient, but in relation to defence, next to nothing. We were nearly in the same state of preparation now as two years ago, when the non-importation law, that *panacea* of political empiricism, came into vogue. So late as the last session of Congress, the House had been told by a gentleman from Massachusetts, not now in his place, that this law had already done wonders; that until it had passed, Great Britain would not listen to any proposition from our Ministers; but no sooner was it enacted, than her ears were opened, and a disposition manifested to grant our demands. But a regular course of this nostrum had ended, as all quackery was sure to do, in an aggravation of the disease. The gentleman from Maryland had said something which he could not distinctly hear, concerning the Spanish Minister. He hoped the gentleman did not consider him as an apologist of Spain, or her Minister. He had warned the House two years ago of the consequences of truckling to Spain—of the inevitable effect of such mean submissions on the conduct of other nations towards us. What then was prophecy is now history.

A fear had been expressed, that, if a reluctant assent were given to this bill, we should disappoint the hopes of the people. Mr. R. said he *did* give a reluctant assent. Because it was a measure of defence? No, because it was a half measure, a mere make-believe, a tub to the political whale, something like the famous act for raising volunteers, which had caused so much confusion in our militia system, that in fact it could not be executed, because, more especially, the expense had been illegally incurred. But he would be the last to give a reluctant assent to vigorous and efficient measures originated in a Constitutional way, which might be deemed essential to the national defence, or to the vindication of the national honor. If, instead of waiting the slow return of the Revenge, Congress had been assembled immediately on the attack of the Chesapeake, to provide for the common defence, he would have given his warmest assent to any measures that could have been devised for retrieving the national honor. For, if anything was worth going to war for, it was a nation's honor, since it is inseparable from a nation's safety.

Mr. QUINCY deemed it his duty to assign his reasons for the vote he was about to give. The House would recollect, that, in the course of proceeding which had taken place yesterday, this bill containing so many appropriations, and coming before the House under such peculiar circumstances, and a motion being made for the Committee to rise, he had assumed the parliamentary right of asking of the organ of the House a few questions, in order to ascertain the particular objects of these appropriations, whether the amount of appropriations in the bill covered the whole extent of military stores mentioned in the President's Message, as having been purchased, and whether they extended over all the expenditures which had been made? He had conceived that all the questions he had asked, were relevant to the subject, and such as he had a right to ask. He had expressed no disapprobation of the appropriation or the expenditure which produced it, but merely asked for information. There was no gentleman of the Committee of Ways and Means who pretended to illuminate the subject; on the contrary, not a collateral remark had been made. It had been said that he wished to overthrow the bill. Being placed in this situation, he deemed it his duty to add a few remarks to show what were the real objects of his inquiries.

He laid it down as a principle, and he called on gentlemen to contradict it, that this was a particular case on our records, unprecedented as he believed. The gentleman from Virginia had au-

ticipated his ideas on the subject: that, though under former appropriations there had been misappropriations, there had been no instance in which there was not a previous appropriation. This was a new case—a leading case—for which there was no precedent. He wished to know its particular circumstances, how the faith and honor of the nation was pledged, and how it had been done? He thought he had a right to ask this. He made the inquiry for another reason: in all cases under the former Administration, although misappropriations had been made, the whole procedure had been avowed; always appeared on the records, from reports of the committees, or from some representation to the House. As an evidence of this, Mr. Q. referred to a report of a committee made on the 22d of May, 1794, in which the committee expressly said:

"It has occasionally happened that the omission or delay of appropriations by law, renders it impossible to satisfy, in regular course, demands upon the Treasury, which have been incurred pursuant to law, and the satisfying of which is essential to the public service.

"In such cases, the course has been for the Secretary of the Treasury to request informal advances by the banks to the persons to whom the payments are to be made, to be reimbursed when provision is made by law. The account of such advances are distinct from that of the Treasurer, and the advances are reimbursed, when provision is made by law, by warrants upon the Treasurer."

If that Administration were now in power, and the principles now prevailing, which were then justified, he would have given them his sanction, because the course was obvious. But in the report of the committee of investigation made to the House in 1802, this proceeding had been declared irregular; and the Secretary of the Navy, in his letter to that committee, had expressly made representations of various errors in the Treasury Department, in applications of money. This being the case, was it not proper that the House should understand the mode in which this had been done? Whether any money had been drawn out of the Treasury, and how got at? Mr. Q. had meant to cast no imputation on the bill. There were two things to be considered; one, the correctness of the end, the other, the correctness of the means to that end. He believed it had been proper, under all circumstances, for the Executive to take measures for providing those means; but did it follow that the House should authorize them without information on the subject? They should know the particulars; they should ask for them. Did the House know anything about it? No. The gentleman from Maryland who had just spoken, had stated that no money had been actually paid; and yet the Secretary of the Navy states explicitly. "We have consequently purchased all that has been offered for sale at a reasonable price." What payment had been made for the purchase he should like to know.

Mr. Q. said he had no objection to the object of the bill; but wished to be enabled to give his full and perfect approbation to the measure. At present he could only give a half way assent; but could not say the whole course had been correct. If any reflection were cast on this occasion, it should be on the committee who reported the bill.

Mr. W. ALSTON said, the question was, as he understood it, whether the House would pass a law for defraying the extraordinary expenses which had been incurred in consequence of certain events. To him the discussion which had taken place, was the most extraordinary which he had ever witnessed. Instead of coming forward and opposing this measure, gentlemen employ themselves in justifying their conduct on former occasions, and abusing the Administration. If they wish to arraign the Executive or any of its acts, let them come forward in a manly manner, and lay a resolution on the table for the purpose: and not arraign their conduct, while they sanction the measure. This was the proper way, and if he were displeased with the Administration it was the course which he would pursue. Was it fair for gentlemen who approve its conduct, to propose measures which would cast a censure upon every step which had been taken? He thought not.

The gentleman who had just sat down, had said, that he wished no concealment, he wanted information. Surely that gentlemen had not read the estimate from the Secretary of the Treasury laid on their tables; for in that he might find ample information; it stated the very articles for which those expenses had been incurred. It had been said there was no law to cover this expense: no person denied that. Was it a question material to the House whether they were paid for or not, or if paid for whether out of any particular appropriations? The prices given for the particular articles were shown to them; there were merchants in the House who knew what the price of those articles should be; he presumed that if any extraordinary price had been given, some gentleman would have said so.

It had been said that the President should have called Congress, and not have violated the laws of his country. He thought this the greatest emergency that had ever occurred, and that we were now better prepared to decide on the important question of peace or war, than at the moment when the event had taken place which called them together. The course which had been pursued would be sanctioned by all prudent men, and if by this course war had been averted, the voice of the nation would approve it. The cases which he had heard cited did not apply, for in the present case there had been no improper application of public money; what contracts had been made it was not for him to inquire, but it appeared that not a cent had been drawn from the Treasury without appropriation.

Mr. CHANDLER remarked that the gentlemen from Massachusetts and Virginia had argued much on the subject of this appropriation. Their whole argument had gone to show, that it was improper to apply money to one purpose which had been appropriated to another; or at all to apply money which had not been appropriated. It appeared to

him that the present case differed very much from that of applying money without previous appropriation: there had been no money applied. The exigency of the country, in the opinion of the Executive, required these contracts to be made. They had been made; but no money had been paid. The gentleman from Massachusetts wished to be told the difference between paying for an article and purchasing it: the distinction was obvious, an article may be purchased to-day and paid for to-morrow. He must confess that in this case he could neither see misappropriation or misapplication.

Mr. FISK said, he had understood that there were diseases both of body and mind, which admitted of no radical cure. The disposition to find fault was one of these. The gentleman from Massachusetts had complained that the Committee of Ways and Means had not done their duty; he wanted to know the prices given for the several articles before he could give the bill his full assent. At present he was in Egyptian darkness; an obscurity so great as to be tangible; this being his situation, it was doubtful whether any ray of light reflected by reason could reach his optical nerve; there could be no doubt but his mind was clouded, for had he read three lines more of the letter of the Secretary of the Navy to the committee, a part of which he had just read, he would have found the very information he wanted: "We have consequently purchased all that has 'been offered for sale at a reasonable price. For 'that stated in the estimate we have given different prices, the lowest of which has been 16, and 'the highest 18 cents per lb. For powder, cannon, 'cannon-ball, copper, canvass, and cordage, we 'have contracted at the ordinary market prices."

Here they found the prices which were given for saltpetre; the other articles were purchased at the market price. Did the gentleman wish the House to return the letter to the Secretary, to ask what the market prices were? Surely not. Mr. F. conceived the only question now was, whether it was expedient to make the appropriation, (it was at their option,) or withhold it. The money had not been paid. The President had told them that he made the purchase on his own responsibility; yet the gentleman from Massachusetts thought the money was actually paid, because purchase implied payment: the gentleman might, as a professional man, have found a very plain distinction between purchase and payment. The same gentleman had said, that the Executive, in the present instance, had exceeded the powers delegated by the Constitution much more than had been done by his favorite Administration in the case cited by the gentleman from Virginia (Mr. RANDOLPH.) Mr. F. thought very differently. In that case money appropriated for one object was taken from it and applied to another: in the present case no money had been drawn from the Treasury; no money had been paid.

The gentleman from Virginia had reminded them of the measures adopted the first session of the ninth Congress, to which he attributed the late outrage committed by a British ship on one of our public armed vessels. Mr. F. called upon the House to decide whether the measures then pursued provoked, or the conduct of the then minority in Congress invited, this outrage; that minority which endeavored to distract and weaken the counsels of our Government, who declaimed against all opposition to British usurpation, and declared, that the British navy was the only barrier between us and universal despotism. These things circulated and were read with avidity in that country, and no doubt induced that nation to believe that there was a strong party in this country in her favor, and that she might insult us with impunity. But, thank God! said Mr. F., the indignation expressed by the country on the late outrage will convince them of the error into which they had fallen.

Mr. UPHAM asked the patience of the Committee, while he made a few remarks. He believed that there was a general concurrence of opinion, that the Executive had no right to appropriate money for any object not authorized by the Legislature; the Legislature had not authorized the making contracts or purchases; but, as the general principle of appropriation was not contested, it became a question whether more good or evil would have resulted from calling Congress together previous to making these preparations. Upon a whole view of the subject, and as it was necessary to send a vessel with despatches to England and allow time for its return, it was perhaps better for the President to act as he had done.

He believed that it was unanimously agreed by the motion, that if the English Government had directed the search of a national ship, it was a cause for war; there was no question but an aggression had been committed by searching a national ship by force; and it appeared, from the letter from Admiral Berkley to Captain Humphreys, that it was done by order. This being an encroachment on the laws and usages of nations, he did not wish it to be understood that he thought it improper to make these preparations to resent it. But if they permitted their officers to make contracts unauthorized, if the Legislature were not to examine into, and scrutinize these things, they might conceive they had a right to act in this manner, and it would become a matter of course for them to do so. As to the general principle then there could be no question; but he believed, with the gentlemen from Virginia, that there might be a case where it would be necessary to make preparations before the Legislature could be called; and in that case there should be no sort of reluctance to sanction such measures; at the same time, were it possible, it might be safer to call Congress together.

Under every circumstance of the case, however, he was inclined to believe that the Executive had acted correctly in this case; at the same time that he thought there was no impropriety in making inquiries as to particulars. He concluded by declaring that he should vote for the bill.

Mr. SLOAN would detain the Committee but a moment; he only rose to drop a few hints as to the extraordinary nature of this debate, in the

course of which the proceedings of the first session of the ninth Congress had been brought into view. As they had been brought forward so far, he would bring them still further into view. If the feelings of members were to be harrowed up, and what they had then said introduced at this time, he would inform the gentleman from Virginia, who had undertaken to quote words which had been used at that time, that he too was in possession of words then used by him. Who had been accessary to the present situation? Was it not the conduct of the minority, who were then, and now are, in an underhand way, impeaching the conduct of the Executive? He would ask, and submit the question to the people of the United States, whether the language which had been just quoted by the gentleman from Vermont, had not conduced to this result? Such words as these—that the battle of Trafalgar prevented the fleets of France and Spain from levying contributions on our commerce in our own seas; that if we offended the Minister of the British nation, he would put forth his strength, and make us feel it; that he would cover the ocean with vessels of war; that the British would burn our seaport towns, and drive us from the sea-coast over the mountains! Let the good people of the United States say whether it was observations of this nature which he had noted down, and had in his possession, coming from a member on the floor of Congress, or whether the prudent measures of the President had a tendency to bring about the present trouble. Mr. S. wished the people to pronounce who were the true friends of the liberty and prosperity of the United States.

Mr. D. R. Williams.—I have remained silent to this late period of the debate, expecting the information which I am anxious to obtain would have been extracted by the inquiry of others; nor should I have now risen, had not the question been repeatedly called for from several parts of the House. I am fearful it will be taken before I can be gratified with that which I solicit. To the courtesy of the gentleman from Maryland (Mr. Montgomery) I make my application—he is a member of the Committee of Ways and Means, best informed on the details of the bill, and indisputably has told us more this day, than we were favored with yesterday. I hope, sir, I am not to be marked and noted as an opponent of the Administration, nor as in the remotest degree attempting to assail the purity of Executive motives, in making this request; yet, it appears from expressions which have escaped the gentleman from North Carolina (Mr. W. Alston) and some others, this may be the fact, and that the cry of mad dog, opponent to the Administration, is to be directed against every one who shall be so hardy as to ask more information relative to this momentous subject than precisely so much as the committee has thought proper to give. In the most ordinary cases, this House has not been accustomed to act in the dark, and I hope it never will; but on a subject of the last importance, involving a sacred, a Constitutional question, it is infinitely more important that we should proceed understandingly. The gentleman from North Carolina will allow me to say, it is particularly his duty, with the other members of his committee, to furnish all the information required, as he is now one of the principal characters on whom the House is made to rely for fiscal knowledge. There is one item in this bill, which has escaped notice, and which, to me, appears very extraordinary. We are about to make the appropriation for a deficiency of $87,500, incurred by the purchase of timber for the Navy, says the bill, and yet there is no responsible person making the demand, no document on the table relative to it. There is a sum similar to this in the estimate from the Secretary, it is true, but that is alleged to have been paid for timber for gunboats. Appropriations heretofore have been perfectly distinct, for these two objects, and so they should be now. I was much surprised yesterday, that the usual accurcy of the gentleman from Connecticut (Mr. Dana) had totally failed him, while speaking of this timber for gunboats. The gentleman improved it as an occasion of triumph, and he will permit me to say he triumphed excessively, that this measure which he had proposed at the last session of Congress, but which was then rejected, was now like to pass, through the same House, with an overwhelming majority; because, as he observed, it is now presented to us under the auspices of the highest authority in the Government. The gentleman is completely mistaken; there is no such recommendation in the Message, no such responsibility is therein assumed. The subject of gunboats is mentioned but twice in the Message. In the first place they are thus spoken of: "The gunboats too, already provided, have, 'on a like principle, been chiefly assigned to New 'York, New Orleans and the Chesapeake. Whether 'our moveable force on the water, so material in 'aid of the defensive works on the land, should be 'augmented in this or any other form, is left to 'the wisdom of the Legislature." Again—"Ex-'penses, also unprovided for, arose out of the neces-'sity of calling all our gunboats into actual service," &c. Thus it appears, this object of expenditure is no where alluded to in the Message, for it will not be contended, they are considered "supplements to our existing stock" of military stores. The Chairman of the Committee of Ways and Means has asked of the Secretary of the Navy, and asked loosely too, for such information as he may deem material; and the answer of the Secretary, which must be presumed to contain all the information required, is as silent about these $87,000 worth of timber as the message itself. Upon what authority then is this item introduced, this article which no body acknowledges, which no one is responsible for? I would rather ask if it is not altogether a mistake in the estimate? It seems a mistake, not less monstrous than this would be, is acknowledged to have been committed; for assuredly, it would be a less error to estimate timber for the repairs of vessels than 64,000 lbs. of sheet iron. I voted against the purchase of timber at the last session, I see no reason to change that vote, and will therefore vote against it now; as I certainly

shall, on all occasions, against any measure, under any circumstances, which shall have for its object an increase of the Navy.

Mr. EPPES said, he did not rise for the purpose of entering into a discussion of questions not connected with the passage of the bill. He thought it important the public should correctly understand the grounds on which this appropriation was called for. That money ought not to be drawn from the Treasury unless previously appropriated by law was a sacred Constitutional principle—a principle which he would always support, and to secure which he would go as far as any member of the House. He did not consider that on the present occasion, this principle, so sacred to republicans, had been violated. What was the state of facts on the present occasion? At a time when the public peace was violated, the Executive, on its own responsibility, had authorized contracts for articles of the first necessity—articles essential, in the event of war, to support the honor and maintain the independence of the nation—among these articles, the materials for making gunpowder, for which there was a pressing and urgent necessity. The contracts for the materials for powder and the contracts for timber were not authorized by any existing law. The crisis was one which demanded an immediate supply of such articles as were deemed essential for defence. Both the materials for powder and the timber were considered as absolutely necessary. The Executive did not hesitate to assume the responsibility which the emergency required. Contracts were authorized for articles deemed essential for the public safety, and, on the meeting of the National Legislature, a communication made as to the course pursued. He had stated on a former day his ideas fully as to the other articles in the appropriation, and how far they were authorized by the existing laws. He did not consider it necessary at present to examine the question whether these articles ought at once to have been secured by contract after the outrage on the Chesapeake on the 22d of June, or whether Congress ought first to have been convened. The Legislature, when possessed of all the circumstances which attended that transaction, must decide whether the emergency justified the course pursued—how far a sound discretion has been exercised in assuming this responsibility, and whether the engagements thus entered into ought now to be completed.

Mr. LOVE said he had not intended to have risen on this subject, nor should he then have been subjected to the embarrassment he felt in addressing the Speaker, was it not for the apprehension he entertained, that it might be supposed by his constituents that he was influenced in the vote he was about to give by the same reasons which had been offered by gentlemen, who, arguing against the passage of the bill, had yet declared their ultimate intention to vote for it.

If there is any question in this debate, said Mr. L., it is a Constitutional one. The arguments of the gentleman from Massachusetts (Mr. QUINCY) and those of the gentleman from Virginia (Mr. RANDOLPH,) prove that this, if any, is the ground of opposition. In the authority introduced and relied on by these gentlemen there was, if he recollected it right, (for it was some time since he read the book,) a discussion of the question arising under that section of the Constitution, which declares that no money shall be drawn from the treasury, but in consequence of appropriations made by law. He concurred with the gentleman from Virginia in the respect which is due to the opinions of the Secretary of the Treasury, whose authority is quoted; and if, said Mr. L., I were satisfied that the reasoning he has advanced applied to the provisions of this bill, I would rather incur all the risk which on this or any future occasion might be the consequence of refusing to give our aid to the Executive, when it had, on a great emergency, advanced its personal responsibility, than lend my voice in support of a measure I deemed unconstitutional. If the gentleman who introduced this authority had read a little further back, I think it would have been found, that the first case put by the writer, in illustration of the Constitutional principle, was that, where, under a former administration, a sum of money had been appropriated by law to the discharge of the principal of some of our foreign debts, and it was applied in discharge of the interest. It was certainly more advantageous to the United States to discharge the principal than the interest. But the gentleman from Massachusetts (Mr. QUINCY) has said that in all instances, under the former Administration, there was a particular object for which money was appropriated; yet we find that in the case just mentioned, although the subject was the same, the particular object of application was very different. It appears to me that a misunderstanding of the terms appropriation and application, among us, has produced much of the present debate; they have been indiscriminately used, and for the purpose of expressing the same ideas, although in the authority relied on, the Secretary of the Treasury has, in all the cases he has adduced in illustration, drawn the distinction. In the present case an act of hostility towards this country had called forth the energies of the Government. Contracts for articles of necessity have been made, and the responsibility of the officers of Government stands pledged for their fulfilment. I view the measures contemplated by the bill, as involving a question of expediency only. This being the case, I need add nothing to the arguments equally urged on both sides, in support of the propriety of an expenditure from the highly aggravating cause of it.

Whether, indeed, the former measures of this Government have had the effect of producing the causes of the great national excitement we have witnessed, as some gentlemen seem to suppose, or whether the conduct of Great Britain has its origin in a determined spirit of hostility towards this country, is in the present discussion entirely unimportant; whether the unexampled outrage she has committed on Denmark, or the unprovoked attack on the vessels of Spain, have been invited by the pusillanimity of those coun-

tries, as is suggested was the case with us, are questions which I shall not now discuss.

Mr. Cook expressed his full approbation of the conduct of the Executive, and the officers of the departments. There had been no wrong application of public money, for none had been drawn out of the Treasury. It was merely a question of expediency with the House whether they would sanction the measures which had been adopted; the President had not bound them to do it, and they were at liberty to act as they chose. Approving as he did the course pursued, he should vote in favor of the bill.

Mr. Lyon would not occupy the House long on a subject of so little importance. On the score of consistency he should vote as he had always done. When appropriations were made without authority, if he liked them he had voted for them; if he did not, he had voted against them. He thanked the President for the promptitude which he had manifested by his conduct on this occasion, and could see no harm which could arise from it. If the House approved the measures, they would vote for them; it would be immaterial to them whether the bargain were made to day or to-morrow. And as he did like them, and the House liked them, he would vote for the bill without detaining them a minute longer on the subject.

Mr. Gardenier had been much pleased with the debate which had taken place on this subject, in the course of which gentlemen had an opportunity of expressing their opinion not only on this particular subject, but generally. The attack on the Chesapeake made on the 22d of June last, had called from the nation one universal expression of abhorrence; one burst of execration at that daring assault, had resounded from every part of the Union. It was the voice of a powerful nation, calling for satisfaction for her insulted rights; and when heard, it would be respected. In no part of the community had this expression been more sincere than in the city in which he resided (New York,) that city which would endure, if any part of the country suffered, the most dreadful calamities of war; that city, defenceless, unprovided, and exposed, whose inhabitants had been told by gentlemen on the floor of that House, that they must fly to the mountains for protection; in that city the same sentiments prevailed which existed in every part of our country.

At this period, the President, feeling without doubt the same sentiments as had been unanimously manifested by the people, had thought proper to go into the expenditure for which an appropriation was now asked. Mr. G. said, it could not be doubted, but the President, when he pledged the faith of the Government for the purchases which were made, had violated that article of the Constitution which lodged in that House the only power of appropriation. He was not, however, one of those who thought such conduct could not be justified; he thought it could; not because he would encourage liberties to be taken with the Constitution, not because he held the Constitution less sacred than any gentleman on the floor of that House; but because the safety of the nation is the supreme law.

While he expressed himself pleased with the debate, Mr. G. could not agree with the gentleman from North Carolina, who thought it an extraordinary one; for whatever were the object, if any officer of the Government had transcended his powers as limited by the Constitution, it was not proper that the procedure should be treated with levity. As such a conduct might encourage violations of the Constitution, he was glad that no expenditure could take place without exciting the attention of the House; that when exercising its prerogative, the Executive would not be encouraged in putting its hands into the Treasury. It would show to the President or any other officer, that the House were jealous of their Constitutional rights. Mr. G. could not say with some gentlemen that it would have been imprudent, or in any degree improper, to have convened Congress earlier than the day on which they had met; and though he would permit the President to do these things, he would only permit it when Congress could not be convened in sufficient time. Four months had elapsed since the outrage had been committed; during what portion of this interval, the expenses of the Navy Department had been incurred was not known; but in all probability Congress might have been convened in sufficient time to have made a previous appropriation.

The gentleman from Pennsylvania had told them that it was the custom of an ancient nation to deliberate on a question twice, once when drunk, and once when sober; therefore Congress should not have been convened whilst they felt the first sense of indignation. Did the gentleman mean to say that this was a drunken nation? That a nation glowing with indignation at an act of insult was in a state of intoxication? Was not this a period at which the Representatives should have been assembled? Mr. G. trusted that however great the general execration, however great the excitement, the Representatives would have been sufficiently cool. He did not think that these sentiments had in any degree subsided; he saw no appearance of it in the country, none in the House, none in the gentleman from Pennsylvania; the same feelings were still cherished that existed four months ago.

Upon the whole, however, Mr. G. thought the Executive had on this occasion conducted fairly, with a single eye to the public interest. He should vote for the bill, not as a precedent, or to encourage any Department in the unauthorized use of the public treasure, but because he thought the measure proper.

Mr. Smilie did not mean to insinuate that the nation was drunk; he meant that the hour of extreme feeling was not the proper time for deliberation. Whilst he entertained that sentiment, he honored American feelings on the occasion; he rejoiced to see that spirit shown. Since he was up, he would just take notice of the idea that seemed to have taken possession of several gentlemen as to the convention of Congress at an earlier period. He had mentioned yesterday why he thought the

President had acted prudently in not calling Congress sooner; suppose they had been convened in the month of August; it was true they could have made an appropriation, but they could not have decided on the main subject, nor could they now. They must have waited, at an enormous expense to the Union, for despatches from Europe. Under these impressions, he was one of those who believed that the President had acted properly. Many things had been said in the course of debate, irrelevant to the subject. As to a review of what had been done in 1805–6, it was improperly introduced; at another time, when the proceedings of the Legislature of that day should come properly before them, he was willing to meet a discussion, and to justify those measures. On that occasion he had thought, as he did now, that war was one of the worst of evils; and that no nation should engage in it when by any other means she could preserve her honor. He was now, as then, opposed to war; but if it should be forced upon the nation, he should be one of the last to shrink from it. He thought that the going to war on this aggression, under present circumstances, would be acting precipitately; as no nation should go to war till she gave her opponent an opportunity to justify her conduct.

Mr. RANDOLPH begged leave to be indulged with a few words by way of explanation. Much had been said on a former occasion about dumb legislation. He believed they had almost reached that point at present. In the magnificent apartment in which they sat, and which was fitted for any purpose rather than that for which it was designed, it was scarcely possible to hear, or to make one's self heard. This was surely no distant approach to legislation without debate. In consequence of the effort which he had been compelled to exert, at no small expense of constitution, his attention had been forcibly dragged from the subject before them, and he had perhaps used some expressions which fell short of his meaning, and others which did not come up to it. He wished to be clearly and emphatically understood as to the course which he thought it incumbent on the Executive to have pursued, and consequently to what extent the course which had been pursued met his disapprobation. He thought Congress ought to have been immediately convened on the capture of the Chesapeake, and our Ministers at London instantly recalled, after having made an explicit and peremptory demand of redress—and that redress, too, by a British envoy dispatched to the United States for the especial purpose. Congress being convened, the nation should have been put into a posture of defence, waiting a reasonable time to receive redress by an envoy. That being refused, instant retaliation should have been taken on the offending party. Mr. R. would have invaded Canada and Nova Scotia, and made a descent on Jamaica. He would have seized upon Canada and Nova Scotia, not with a view to their incorporation into our system of Government, but as pledges to be retained against a future pacification, until we had obtained ample redress for our wrongs. Whilst he held these sentiments he entirely concurred with the gentleman from Pennsylvania, (Mr. SMILIE,) that war was a great evil, never to be resorted to without a solemn demand of reparation from the offender, and giving him a fair opportunity to make due atonement for the injury, or insult, which he had offered: but there was a mode of demanding as well as of receiving redress.

Mr. R. said he should forever protest, wherever it could possibly be avoided, and here it might have been avoided, against expenditure of public money without the previous sanction of law. But condemning an expense and refusing to appropriate money to discharge it were different things. A man, for instance, might highly disapprove his wife's running up a large account with a merchant, without his knowledge or consent, which his honor would nevertheless compel him to pay. Incurring a debt was one thing, and discharging it another. Mr. R. believed it was within the knowledge of many members of that House that during the late war between France and England, which was terminated by the peace of Amiens, the extraordinary expenses, that is, the expenses incurred without the knowledge and concurrence of Parliament—such expenses as this bill provides for—exceeded the ordinary or authorized expenses during a single year of that war, although these last amounted to near twenty millions sterling! Ought we not then, said he, to set our faces against the introduction of a principle, which must necessarily lead to consequences so ruinous? Would any man put the additional security which we derived from a few military stores, in competition with a violation of the Constitution, in a point too involving the dearest privileges of that House? Whilst he held this language, he was not insensible to the impending danger, nor unwilling to make efficient provision to meet it. Let us not, he said, deceive ourselves with the idea that we are to have a war of military parade. Sacrifices they would be called upon to make, and he was prepared to meet them. He hoped they would enter into it, if war we must have, with a full conviction of its justice and necessity, and with hearts resolutely bent to endure all its privations and abide by all its hardships. He had on a former occasion said, that if Great Britain put forth her strength we should feel it; she had put forth her strength and they had felt it—you feel it now, sir, said he, in every fibre of your heart. It could not be expected that he should answer insinuations of a British party in that House, coming too from such persons. Neither could it be expected that he should sink into that vile and supple thing, an humble follower, a pliant tool of a majority, and tacitly disavow the principles for which he contended two years ago. He had then, as far as in him lay, endeavored to avert the situation of affairs which now exists, and under the same circumstances he should do so again. It had been said that it was idle to retrospect on the causes which led to that situation, and he agreed that it was, so far as related to the foreign Power, but not as it related to the conduct of our own Government. It was totally immaterial what were

the previous points in dispute between us and Great Britain.. Her conduct had put it out of our power to look back upon them; to examine into them; had precluded all deliberation. We had received a blow, and it was out of the question to enter into the merits of the disputes which had produced it. To Great Britain the door of discussion was shut, was barred, and she must knock with the light tap of solicitation before it could be opened to her. But let no gentleman calculate upon throwing the difficulties into which the country was brought, upon those who had opposed the measures of imbecility and irritation which led to them. He could not consent to take upon himself any part of the credit which the non-importation law conferred upon its supporters, however anxious they might be to share it with him.

If the gentleman who had alluded to something in Gallatin on the finances, (Mr. Love,) and who had begun very early to instruct them in the meaning of terms which, it seemed, they had been all their lives using without understanding, (a specimen of his embarrassment and modesty which Mr. R. had not expected,) had read a little farther, he would have found this passage:

"It was this transaction which gave rise to the following motion made in the House of Representatives in February, 1793, viz: '*Resolved*, That the Secretary of the Treasury has violated the law passed on the 4th of August, 1790, making appropriations of certain moneys authorized to be borrowed by the same law, in the following particulars, to wit: 1st, by applying a certain portion of the principal borrowed to the payment of the interest falling due upon that principal, which was not authorized by that or any other law,' &c. Although it is now demonstrated by the official statements (from which the statements Nos. 11 and 12 are abstracted) that that resolution was strictly and literally true, it was at that time negatived by a large majority."

Now, gentlemen would pardon him for not feeling that religious deference for the dicta of a majority which some of them entertained, when he saw that a resolution, demonstrated by official statements to be strictly and literally true, might nevertheless be negatived by a large majority.

There was one thing which he begged leave to notice in his desultory way—a sort of political quibbling on the terms, money drawn out of the Treasury. The mass of the good people of the United States did not know that in their plain, plantation sense of the word, we had no Treasury—that the banks were our treasurers. Thus money may be drawn out of the bank which is not drawn out of the Treasury, because it is not issued according to law. It is only when issued agreeably to law that it can be said to be drawn out of the Treasury at all, and it may, in technical phrase, be drawn out of the Treasury without a single dollar being removed. For instance: one million is voted for the naval service. The head of the department applies to the Secretary of the Treasury, upon whose warrant so much money is placed to the credit of the Navy Department at the bank. As soon as the money is made liable to the order of that department, it is out of the Treasury, although not a dollar has changed its place. On the contrary, where a head of department wants money, purchases may be made upon credit, with an understanding at the banks and with the purchaser that the notes are issued for the service of Government. Discounts are obtained and the United States pay the difference, in the price of the commodity. Here, although the money has gone out of the bank, it is, in legal phrase still in the Treasury, until Congress meet and pass an appropriation law, when having been paid to take up the notes it marches again out in official costume and parade.

Gentlemen had indulged themselves in the course of this extraordinary debate—extraordinary he must call it—had tumbled headlong into it, by expressing the most rigid attachment to the strictest principles of financial policy, and in return all they asked was, that in this, or any other case, where it might suit them, people would not be unreasonable enough to expect from them an adherence to those principles; like some other secretaries they made a sort of commutation between the rigor of their public professions and their private morals. But Mr. R. would not agree that the austerity of their principles should cover the looseness of their practice. If their former professions now called for more than they found themselves able to perform, it would be more fair and manly honestly to confess it, to abjure their old faith and take up one better suited to their frail and imperfect condition.

One of the observations of the gentleman from Pennsylvania was thrown away upon him; he could not feel it. If the expense of convening Congress were to be made a pretext for acting without its authority, we might as well give the Executive a power of attorney at once to legislate for us. He scouted such an idea. It would have been better to have convened Congress at the expense of half a million, than that a single cent should have been drawn out of the Treasury without a previous appropriation by law.

The question was now taken on the passage of the bill, and decided in the affirmative—yeas 124, nays 2, as follows:

Yeas—Evan Alexander, Lemuel J. Alston, Willis Alston, junior, Ezekiel Bacon, David Bard, Joseph Barker, Burwell Bassett, William W. Bibb, William Blackledge, John Blake, junior, Thomas Blount, John Boyle, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, George W. Campbell, John Campbell, Peter Carlton, Epaphroditus Champion, John Chandler, Matthew Clay, John Clopton, Howell Cobb, Orchard Cook, John Culpepper, Richard Cutts, Samuel W. Dana, Ezra Darby, John Davenport, jun., John Dawson, Josiah Deane, Joseph Desha, Daniel M. Durell, James Elliot, William Ely, John W. Eppes, William Findley, James Fisk, Meshack Franklin, Barent Gardenier, Francis Gardner, James M. Garnett, Peterson Goodwyn, Edwin Gray, Isaiah L. Green, John Harris John Heister, William Helms, James Holland, David Holmes, Benjamin Howard, Reuben Humphreys, Daniel Ilsley, Robert Jenkins, Richard M. Johnson, Walter Jones, Thomas Kenan, Philip B. Key, William Kirkpatrick, Nehemiah Knight, John Lambert, Joseph Lewis, junior, John Love, Matthew

Lyon, Robert Marion, Josiah Masters William McCreery, William Milnor, Daniel Montgomery, jr., John Montgomery, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, John Morrow, Jonathan O. Mosely, Gurdon S. Mumford, Roger Nelson, Thomas Newbold, Thomas Newton, Timothy Pitkin, jun., John Porter, John Pugh, Josiah Quincy, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Matthias Richards, Samuel Riker, John Rowan, Lemuel Sawyer, Ebenezer Seaver, James Sloan, Dennis Smelt, John Smilie, Jedediah K. Smith, Samuel Smith, John Smith, Henry Southard, Richard Stanford, William Stedman, Clement Storer, Lewis B. Sturges, Peter Swart, Samuel Taggart, Benjamin Tallmadge, John Taylor, David Thomas, John Thompson, Abram Trigg, George M. Troup, Jabez Upham, James I. Van Allen, Philip Van Cortlandt, Archibald Van Horne, Killian K. Van Rensselaer, Daniel C. Verplanck. Jesse Wharton, Robert Whitehill, Isaac Wilbour, Alexander Wilson, Richard Winn, and James Witherall.

NAYS—William Hoge and David R. Williams.

Mr. VAN HORNE presented a petition of sundry inhabitants of the City of Washington, in the Territory of Columbia, praying that so much of a law of Congress, passed on the first day of May, one thousand eight hundred and two, and which expired, by its own limitation, on the first of May, in the present year, as relates to the incorporation of a company for the purpose of opening and completing a canal in the City of Washington, may be revived and continued, and that such rights, powers, and privileges, may be vested in, and granted to, the said company, as may be deemed most proper for effecting the object stated by the petitioners.—Referred to Mr. VAN HORNE, Mr. WHARTON, Mr. ROWAN, Mr. VAN ALLEN, and Mr. LOVE; to consider, and report their opinion thereupon to the House.

Mr. CLOPTON, from the Committee of Revisal and Unfinished Business, to whom it was referred to examine and report such laws of the United States as have expired, or are near expiring, made a report, in part, thereupon; which was read, and ordered to lie on the table.

WEDNESDAY, November 11.

Mr. RHEA of Tennessee, Chairman of the Committee on Post Offices and Post Roads, presented to the House a letter addressed to him from GIDEON, GRANGER, Postmaster General of the United States, accompanied with sundry applications and petitions for the establishment of new post roads, and the alteration of existing post roads—Referred to the Committee on Post Offices and Post Roads.

A message from the Senate informed the House that the Senate have appointed the Reverend Mr. MCCORMICK a Chaplain to Congress, for the present session, on their part, in the room of the Reverend Dr. GANTT, who hath declined that appointment.

PUBLIC LANDS.

Mr. J. MORROW said, that an act for the sale of public lands had been passed in 1796, which provided that certain sections should be reserved for the disposal of Congress in each township; in 1800, an act was passed authorizing the Surveyor General to lease these sections, parts of which were accordingly leased. An act had been since passed authorizing the sale of the sections heretofore reserved for the disposition of Congress, with a provision attached to it, that no section should be sold at a lower rate than eight dollars per acre. This price was so extravagantly high, that it appeared from the report of the Secretary of the Treasury only four sections had been sold in the course of the last year. To reduce the price fixed, so as that all the public lands might be sold and occupied, he moved the following resolution.—He remarked that a similar resolution was last year referred to the Committee on Public Lands, who reported a bill; but from the press of business it was not acted on:

Resolved, That the Committee on Public Lands be directed to inquire into the expediency of making further provision for the sale of the lands reserved for the disposition of Congress—and that they have leave to report by bill or otherwise.

The resolution was agreed to.

ARMS AND ORDNANCE.

Mr. DAWSON said, within a few days a number of gentlemen in the House had expressed much feeling on the subject of the injuries which have been received from a foreign Power, and seemed desirous of a minute inquiry into the business. He rejoiced at these expressions of indignation. Whether it would become proper not only to speak, but to act, depended on circumstances not within their control. He was informed by the Secretary of War that there were in the magazines of the United States a great number of stands of arms, of our own manufacture, which were daily increasing. It appeared that some of the States were in want of arms; the distribution of these would be serviceable both to the United States and to the States individually. For this reason he moved the following resolution:

Resolved, That a committee be appointed to inquire into the expediency of selling to the individual States or Territories, who may wish to purchase, any arms or ordnance owned by the United States and which may be parted with without injury to the public; and that they report by bill or otherwise.

Mr. NELSON had no objection to the principle embraced by the resolution, but thought it was improperly referred. He moved that the resolution should be amended so as to refer it to the committee on so much of the President's Message as relates to military establishments, &c.

Mr. DAWSON had no objection.

The resolution thus amended was agreed to.

IMPORTATION OF SLAVES.

Mr. RANDOLPH said, that at the last session of Congress, an act had been passed prohibiting the importation of slaves into any port or place in the United States after the 1st day of January next. One of the sections of that act contained a principle in his opinion totally subversive of the right of property in slave-holders. He had wished the subject to have been considered at the last session;

but from the late period at which it had been brought forward, the House had declined acting upon it. He would say no more upon the subject at this time, but wished a bill to be brought in for amending the act, for which purpose he moved the following resolution, which was adopted:

Resolved, That a committee be appointed to inquire into the expediency of amending the act, entitled "An act to prohibit the importation of slaves into any port or place within the jurisdiction of the United States, from and after the first day of January, in the year of our Lord one thousand eight hundred and eight."

Mr. Randolph, Mr. Calhoun, Mr. Southard, Mr. S. Smith, Mr. Gardenier, Mr. Tallmadge, and Mr. Barker, were appointed the said committee.

BRIDGE ACROSS THE POTOMAC.

The House went into Committee of the Whole on the bill for erecting a bridge over the Potomac river.

Mr. Lewis having moved to fill up the blank in the first section by inserting the names of various persons contemplated as commissioners for receiving subscriptions,

Mr. Nelson said that, in order to supersede the amendment of the gentleman from Virginia, and that the question of the justice and policy of the measure might be brought before the House, he would move to strike out the first section of the bill.

Mr. Lewis observed that, after a subject had been so often discussed by the House, and received its assent for four years successively, it might be expected the gentleman from Maryland would offer some reasons for his objection to a principle sanctioned by the House. When reasons were offered against it, he should be prepared to meet them, and give reasons in its favor.

Mr. Nelson said, that when a measure of this kind was proposed, it had always struck him that the gentlemen who advocated it should themselves give some reason why it should take effect, and when a measure was offered which was unknown to a great body of the House, it was incumbent on the proposer to show some reason why it was necessary; if it was not necessary, it should not be agreed to. It was putting the cart before the horse, to show reasons why it should not be adopted; but he would dispense with the point of form, and comply with the wish of the gentleman from Virginia.

Mr. N. said, if he were addressing a body composed of the same members as heretofore, he should not repeat those ideas which he had heretofore expressed. But, although this body was the same, its component parts were very different; to some of them, the subject was new, as he did not expect that any impressions had been made on them outside of the walls of the House. If he were prepared on the subject fully, which he certainly was not, he would divide it into two parts. *First.* He would contend that Congress had no power to pass this bill. It was unconstitutional. They had received from the States of Maryland and Virginia no right to pass such a law. This District was ceded by them, and they had given no such right. But he would pass over this point. The arguments which he had used the last session as best calculated to elucidate the subject, had escaped his memory. *Second.* A few words as to the policy of the bill. This building (the Capitol) was situated in the City of Washington, a place designated as the permanent Seat of Government, containing a large tract of ground, so large that the interests of one part of it differed from those of the other, each cavilling and disputing whether the proposed measure should be carried into effect; one part strongly asserting one right, and the other as strongly asserting the other. This was their unfortunate situation. The people of the eastern end of the town, and of Alexandria, had become jealous of the little town of Georgetown; and the citizens of Georgetown say, that in order to injure the town, this measure is proposed, which would destroy the interests of that town and the western part of Washington, by erecting a bridge, which would stop the navigation of the Potomac, as respects Georgetown and the western part of the city, from the sea. Mr. N. asked whether members were prepared to sacrifice one part of the citizens of this District to raise up the other? Would it not be better to leave them in their present situation, to do as well as they could?

The Potomac washed a great part of the upper country of Maryland and Virginia. The people above the falls were interested against this measure. It was advantageous to them to have a market as high up as possible. This they possessed in Georgetown. But, when this bridge shall be thrown across the river, they must go down to Alexandria at an increased expense. Was the House to gratify a few people about the Capitol, and at Alexandria, against the interests of the western part of the City, Georgetown, and of a back country of an extent of one hundred and fifty miles? Was it good policy in the House, in order to gratify some of the members of that House, or those people who keep huckster's shops about the Eastern Branch, or a few broken merchants at Alexandria, to sacrifice a great part of the State of Maryland? He wished gentlemen to come to that House with a disposition to do justice to all, and not to raise up one part at the expense of another. But, these circumstances were predicated on the ground that the bridge would operate in that manner. He was not as well informed on that subject as he might be, for he was an inland man and did not know much about navigation; but, he was induced to believe that a bridge of this kind would destroy the navigation of the river, as far as the bridge itself. It was impossible to say with certainty that it would have that effect; but, would the House run the risk, when it was even possible that it might destroy the interests of the people on the waters of the Potomac?

Mr. N. hoped that some gentleman better informed on the subject than he was, would afford more information. He went on this principle, viz: that, in the Legislature, every man would do

justice. The doubt alone, on the subject, should prevent them from passing this law; and, said Mr. M., as no man can say with certainty that it will not have the expected effect, let the people remain in the situation in which they now are, and in which nature has placed them.

Mr. LEWIS said he should certainly enter into this discussion with extreme reluctance, not arising from want of such information as would enable him to convince the Committee it was proper to pass this bill, but, because they must be already wearied with the subject. And, were it not for the members present to whom the subject was new, he should not trouble the House with any observations on the question. Those gentlemen who had been there at former sessions, were so well convinced of the propriety of the votes they had then given, that he should not have insulted their understandings by repeating reasons in favor of the measure. But the Committee would pardon him if he entered somewhat into detail to satisfy the minds of members who had not had an opportunity of hearing arguments before.

The gentleman from Maryland had taken a ground which he did not expect would, at this time, have been brought up, the unconstitutionality of the measure. That point had been settled three years ago, on the subject of the causeway erected from Mason's island to the other side of the river. It was decided at that time that Congress had exclusive jurisdiction. Should it be said that they had been legislating here since the year 1800, without knowing they possessed a Constitutional right to do it? He did not expect this would now become a question. He asked the gentleman from Maryland why he, who so strongly advocated the Constitutional right to pass a law for erecting this causeway, which obstructed one arm of the Potomac, should now oppose the erection of a bridge, which would be no obstruction. Three years ago, Mr. L. said, he had voted with that gentleman on the subject. He did so because the people of Georgetown thought it would deepen the channel. He himself did not think it would have that effect; but, as they wished to try, he had no objection to the experiment, and voted for it. He was then as much in favor of the causeway, as he was now in favor of the bridge. What was the opinion of the State of Maryland? To evince what that opinion was, Mr. L. quoted the preamble of an act passed by the Legislature of that State in 1791, viz:

"Whereas it is represented to this General Assembly, by Samuel Blodget, Robert Peter, William Deakins, junior, James M. Lingan, and Uriah Forrest, that they, together with others, are desirous of forming a company for the purpose of erecting a bridge over the river Potomac, at or near Georgetown; and, whereas this General Assembly approve the measure, which, if effected, will tend to facilitate the communication, and contribute to the convenience of the citizens of the United States."

But if it were necessary to occupy the time of the Committee on that subject, he would go back to the original claim of the State of Maryland to the territory which they had ceded; but the matter was too clear to admit of a doubt, and he would not trespass unnecessarily upon the time of the Committee.

The gentleman from Maryland had said that, if this bridge was erected, the navigation of the river would be stopped. Was this the fact? Did they propose to stop the navigation? Certainly not. What did the petitioners ask? They asked a free passage over the Potomac, which would not only save the people of the District, but the people of the Union, almost half the whole distance which they had now to travel in going from one end of the District to the other. It was a fair compromise between the people of the United States and the people of Georgetown. If they will permit us to cross the river in a safe and expeditious manner, over a bridge, we will permit their vessels to pass up and down the river through a draw, without any cost or detention. Would it be said that the people of Georgetown possessed a greater right to accommodation from the waters of the Potomac than the citizens of the United States generally, who had equal claims with themselves? But is this the only bridge over a navigable river in the United States? If it were we ought to deliberate well before we decided in its favor; but bridges had been established all over Europe, and the greatest part of this country upon situations much more favorable to navigation than that in which the present bridge is contemplated, and experience had proved their very great benefit to the public, and no real injury to individuals. A bridge had been erected within the District of Columbia, over the Eastern Branch, possessing a navigation far superior to that of Georgetown; but as the public good required its erection, although a total destruction of a valuable ferry was the consequence, yet no opposition was made to it.

This bridge was authorized by the Legislature of Maryland, who considered a pile bridge no obstruction to the navigation of that river. From what had been said by the gentleman from Maryland, it might have been supposed that this bridge would effect a complete annihilation of the navigation. To the Northward, it was well known to gentlemen from thence, that bridges were built in almost every direction, and over navigable streams leading to towns above them, possessing ten times the commercial importance of Georgetown, and yet no serious inconvenience had been experienced, or injury sustained. In Massachusetts alone there were many bridges below large and flourishing towns. Roxbury, Cambridge, and Charlestown, had bridges; the two first were ports of delivery, which was the best evidence of their commercial importance. There were also in Massachusetts two other bridges, Chelsea, and Malden, through both of which you must pass to get to Medford, a large and flourishing commercial town, and they had been told that property above those bridges had experienced no diminution in value in consequence of their erection.

What obstruction would this bridge afford to the trade of Georgetown? No square-rigged ves-

sel of burden will risk an approach to Georgetown for the purpose of being fully loaded there. Last year, indeed, a few went up empty, took in part of their cargoes there, then dropped down below the situation for the proposed bridge and to Alexandria, where they completed their loads. The only square-rigged vessel belonging to Georgetown, as he was told, was the William Murdock, Captain Tom, and it would not be denied that she did not pretend to load there. It was well known to the members of that House, that, at the last session, this vessel loaded at the Eastern Branch, and that the tobacco with which she was loaded passed by the Capitol in drays from Georgetown; and notwithstanding all this, they were now seriously called upon by the people of Georgetown to protect this grand depository for exportation.

So far from being injured, Mr. L. contended that the navigation of the river Potomac would be benefitted by the bridge. It was well known that in many parts of Europe, and of this country, piers had been sunk in rivers to deepen the channel; it could not be contended, therefore, that the bridge would injure the channel. It might be some inconvenience to pass the draw; but so trifling as to be no object when compared with its general utility. He had in his possession soundings of the river Potomac, which would show, that except a channel of about two hundred yards, the depth at the intended site of the bridge did not average more than five feet. If a vessel passed the draw with a fair wind, she would meet with very little delay; if the wind was not fair, they could not now beat up so narrow a channel, but must lie by; if the bridge was there, they could fix a rope or ropes to the bridge, and pass through by their assistance, and there remain in safety till the wind and tide should prove favorable.

Mr. L. said he had some certificates in his possession, which had been taken with a view to operate against the erection of the bridge; but he thought they were in its favor. They were intended to show the great amount of the exports of Georgetown, and they proved what he wished to establish, that large vessels could not get to Georgetown, and that the exports were generally in small craft—[Mr. L. here read the certificates.] He said he would refer to a statement which was made by a bridge builder in the State of Massachusetts, made at the request of the Legislature of the State of Delaware, who were then about to erect a bridge. These were not certificates in the common way, but sworn to before the proper authority. [Mr. L. here read this statement, which went to prove that bridges, with well constructed draws, were not injurious to navigation, and that the average detention of vessels did not exceed eight minutes at the draw, and that property, in no instance, had been reduced in value in consequence of erecting bridges below it.] Mr. L. said he had read this deposition of Mr. Mills as being the best evidence on the subject; from which there could be no doubt with the Committee, but a bridge could be so constructed as to affect very little the navigation of the river over which it was erected. The only question now was, would this bridge injure the navigation? and if it did, would it injure it to that extent that it would counterbalance the general good resulting from it. He could not conceive that the navigation could receive any injury; and he believed that the inhabitants of Georgetown would sustain but little inconvenience from it. From a statement from the Collector of the port, he wished to show the number of vessels which had been entered at the custom-house in eight years, as well foreign as those in in the coasting trade—[Mr. L. then read the statement alluded to.] It appeared from this statement that the whole number of vessels which had entered at the port of Georgetown in eight years, was 270. He wished it to be understood by the Committee, that though entered at Georgetown, a large portion of these vessels never went to Georgetown at all; all vessels for the Eastern Branch must enter at Georgetown, as that was the only port of entry for both places. Deduct one-third of the whole as the number that probably went to the Eastern Branch, and there would only be 180 left as having gone to Georgetown, of all descriptions; about 23 vessels a year, not quite one for every two weeks. For these few vessels were five or six millions of citizens to be deprived of the convenience of travelling? It was said that the people of Georgetown would suffer; it is granted, in proportion to the detention of the vessels at the draw, but no further. If the vessel was detained ten or fifteen minutes, or an hour, whatever was the value of that detention, would be all the loss the owner would experience.

The gentleman from Maryland had said, that for 150 miles above the contemplated bridge, the interests of the people on the river Potomac would be considerably injured. Mr. L. said his constituents were as much interested in the importance of the river Potomac as any in the United States. How could their interests be injured by it? Their boats travelled down the river, and came to Georgetown or Alexandria, as they chose; it was totally unimportant to them whether a bridge was erected or not; as they could pass between the piers. The people on the Potomac were interested in favor of it; many men of large landed property in the district he had the honor to represent, were very anxious for its erection; and why? Because they were interested in the prosperity of the City of Washington. As the city increased, so did the value of their property. Why did the State of Virginia make a donation of as large a sum as $125,000 towards establishing a city in this place? That it might improve the property in the State of Virginia. The very moment that Congress removed to this city, the property lying above it on the river Potomac, rose in value more than 50 per cent. Suffer this place to go to ruins, and their property sinks to its former level. For these reasons they are greatly interested in the erection of this bridge.

The House had been told by the gentleman from Maryland, that the channel to Georgetown would be impaired by the proposed bridge, and, by the citizens of Georgetown, that the causeway

might remove the mud bank below Mason's island. If the mud was removed from thence, it would only settle below, and form another obstruction. Upon this subject, though he was sorry to detain the Committee so long, he would read the evidence of Mr. Latrobe, an excellent engineer, and surveyor of the public buildings of the United States.

[Mr. L. here read the letter of Mr. Latrobe, in answer to an inquiry of a committee on the subject of the bridge at a former session.]

Mr. L. observed, that upon all subjects of this kind, it was to be expected that a considerable diversity of opinion would exist among those interested. It was therefore not at all strange that this opposition should be made on the part of Georgetown. The same opposition would be produced by the mere circumstance of changing a road, removing a court-house, &c., of which he had known instances. They were not, however, to be actuated by the private feelings or animosities of any part of the District; the measure was for the general good, and if no great injury would result from it, it should be adopted. The House was now called upon by a part of the District to aid them in the improvement of this place. Year after year complaints were heard from one end of the country to the other of the want of accommodations in Washington; and these so loud that motions had been made to remove Congress from this place. If the nation were not willing at their own expense to improve it, in the name of God let the people do it. It was not for the promotion of the interest of any one particular part of the District that Mr. L. advocated the measure; as a Representative of the people, he felt no interest for any particular part more than another. He wished to promote the interests and prosperity of the city, which was the fixed seat of Government, as permanent as the Government itself. When a dam was proposed to be built over one arm of the Potomac for the advantage of Georgetown, no complaints were made; they were permitted to do it A bridge also had been erected on the Potomac above Georgetown, at the Little Falls, which had thrown the commerce of Virginia from its natural channel to Georgetown, which would otherwise have gone to towns in Virginia. Destroy the importance of this city, and their commerce will travel to Baltimore; therefore the people of Virginia were interested in its improvement. They asked for a bridge, for what? To permit an easy intercourse with the State of Virginia.

Confined within ten miles square, under one Government, would you not permit them a passage by a bridge over a river sometimes impassable? They had courts in Washington and courts in Alexandria; two banks on the other side, and two on this. To attend courts, witnesses, jurors, lawyers, &c., must travel from one side of the river to the other; their passage might be obstructed by ice, freshets, &c., in the river. It was well known that there were times when the river could not be passed at Georgetown; what was the consequent situation of a man who had an important suit in a court on the opposite side of the river? He could not come; a decision could not be had; he might be nonsuited. As to the banks, by the act establishing a branch bank of the United States at Washington, a portion of the directors are to be chosen from Alexandria; they were authorized to meet at Washington once a week to make discounts, &c.; business must be laid over if they could not attend. The greatest inconvenience, it might be called *oppression*, would attach to the poor people of Washington and Alexandria. A great many men could not keep horses; when they want to go to either place, they must hire horses, travel twelve miles over a rough road, pass over the ferry if they can; and if detained till evening, could not get home, but must stay all night at a tavern, at great expense. No poor man could have justice on such terms. But if a bridge saved half the distance, it was but an easy walk to those who could not afford to hire horses; whether detained or not, they might sleep at home. Until these grievances were remedied, they would never cease to petition. The people of one part of the District could travel securely up and down the banks of the Potomac, and the people of another part could not pass it. Should the little circumscribed spot of Georgetown be placed in opposition to the whole United States? The inhabitants had told Congress that they should be ruined by the bridge; and they had talked about it so long, till they almost believed it, without being able to assign any reason for their apprehension.

The gentleman from Maryland had asked, would they injure Georgetown to gratify Washington or Alexandria? No, said Mr. L., we will not injure them. But, other people have rights, as well as the citizens of Georgetown, and the interests of one part of the community should yield to those of the whole.

Mr. L. said he had now stated some of the reasons which operated with him, and would, he hoped, operate with the Committee, as applied to the bridge. Now he would state some as they applied to the Government and to the people at large. In winter, the mails had been detained, and members of Congress had been delayed, from the impossibility of crossing the Potomac. This prevention might be productive of the most serious consequences. Gentlemen might expect communications of the greatest importance. From not receiving them in time, circumstances of the most disagreeable nature might result. A great saving to the Government would also arise from the bridge. From carrying the mail between Washington and Alexandria over the bridge, instead of by the present circuitous route, five hundred dollars per year would be saved, and about the same sum in the mileage of members of Congress from the Southward. This Mr. L. said he considered of some importance; and, as he did not make declarations which could not be substantiated, he would read a letter from the Post Office Department to substantiate what he had said. [Mr. L. read this letter to that effect.] There was another very important thing to be mentioned. The mail

stage alone could carry ten passengers. Supposing a saving of five miles would be seventy-five cents saved to each passenger going, and the same returning. One dollar and fifty cents each a day, and ten passengers each day, would be fifteen dollars. If the bridge was erected, there might be thirty or forty carriages passing and repassing each day. There would be a great saving of money. But to some people, that would be nothing, compared with the saving of time. A person wishing to travel from Washington to Alexandria now, was obliged to take the whole day for it; whereas, if the bridge was erected, it would take only from one to two hours.

Mr. L. concluded by saying he was sorry to have occupied so much of the time of the Committee. They must be even more fatigued than himself, and, till he could hear some arguments from gentlemen on the other side of the question, he should say no more.

Mr. KEY.—The honorable member from Virginia, the friend and patron of the bridge contemplated to be erected over the tide water of the Potomac, has said, that he would not have addressed the Committee but for the purpose of operating conviction on the minds of the new members. I am among the number of those, and have heard him with pleasure, but yet remain to be convinced of the propriety of the measure. I have heard nothing to satisfy my mind that Congress are competent to legislate on the subject, and if competent, that there is any imperious public necessity which at this time demands the erection of the bridge, at the expense of the agricultural interest that borders on the Potomac and its tributary streams.

The State, of which I am a citizen, feels so deep an interest to repel this measure, that an unanimous vote of both branches of the Legislature passed at the last session of Assembly to instruct their Senators in Congress to vote against it; and the district which I have the honor to represent, watered by the Potomac and the Monocacy, feels deeply interested in the issue of this question. Supported by interests of such weight and respectability, and of a nature that this Committee will never disregard, I will endeavor to examine, whether Congress have power to pass this law, and if, even they possess the power, whether the exercise of it at this time is demanded by motives of public policy.

The clause of the Constitution of the United States which authorized Congress to accept a district not exceeding ten miles square, for the purpose of exclusive legislation, originated from causes well known to the honorable members of this Committee; when the Convention was framing the Constitution, the protection and security of the future seat of Government and Legislature of the Union, and the departments surrounding them, were objects of primary importance. Past experience had taught them, in a well remembered event, how dangerous their situation was, in the heart of a State incompetent to their protection; and it was within the range of probability, that in the progress of future legislation the States surrounding the seat of Government might be hostile to all its operations. To avoid a repetition of past insult, to guard against future accident, and to create self-protection and security, were the causes that led the Convention to possess the Legislature of the United States of exclusive legislation over the ten miles square, within which their permanent residence was to be placed. The cession by the State of Virginia on one side of the Potomac, and by Maryland on the other, with the acceptance thereof by the President, consummated the objects contemplated by the Constitution. Comparing these instruments together, the Constitution of the United States, the cession and acceptance, and having a steady eye to their object and policy, can we discern anything like a power to enable Congress to do any act that should impede or injure the navigation of the river, to the irreparable injury of the immense and fertile upper country dependant on its waters? For my part, I can see no such power growing out of the object and intention of those instruments. Nay, Mr. Chairman, I advance a stronger position, it was not within the ordinary powers of legislation of the States of Virginia and Maryland to give to Congress such rights, to the injury of their own citizens. By the charter of Maryland, the whole bed of the Potomac river, in its whole extent, was given to the Calvert family, saving and reserving to all the subjects of then (then) Crown of England the free and undisturbed use of its navigable waters. It has never been conceived from the earliest settlement of Maryland that any part of a navigable river was the subject of grant, capable of destruction, or being impaired by law. Like the ocean and the air, it was common and free to all, not only from principles of natural law, but from express grant and stipulation. These principles have been solemnly recognised by the States of Virginia and Maryland by their compact, deliberately entered into, each guarantying the free and undisturbed enjoyment of the Potomac to its citizens. It never was conceived that this solemn stipulation was impaired by a cession of the Territory to Congress. Such a construction would be a violation of all good faith and moral conduct to the citizens, holders of lands on the waters or drafts of the river; for this right of free navigation the upper landholders had paid a valuable consideration. Land is higher from contiguity to water and easy access to market; and this facility of carrying produce to market, by enhancing the value of the land, is a component part of its price in all contracts for it; and to be deprived of this benefit is as essential an injury, as if part of the land itself was taken away. I contend that Maryland could not deprive her citizens of this right without a compensation; that the eternal principles of justice oppose it; the fundamental maxims of a Republic oppose it; and not having the right she could not by the act of cession surrender it to the Government of the United States. It is, however, contended that this question is settled by a decision of Congress in passing a law for the erection of a causeway to Mason's island; but to this a satisfactory answer

may be readily given; that act was to improve the navigation of the river, and it never can be seriously urged, that a power to improve includes the right to destroy. Two channels had been formed, which, by dividing the water, lessened the quantity passing through the older channel. The act authorized the filling or stopping up one, to restore the whole river to its original bed, and thus deepen and place it in its pristine state. The argument urged against me proves too much, for if you could not stop up a channel formed in the last twenty years past by one extraordinary flood, accompanied by an immense mass of ice, and restore the ancient bed and channel, you would be equally prohibited from moving a sunken tree or any other obstruction injurious to navigation; a doctrine too absurd to be supported. Suppose any extraordinary event should force the Potomac through the Tiber into the city and Eastern Branch, could no step be taken to stop the torrent, and place it in its original situation? I hold it most clear that it might. A right to use does not imply a right to abuse, nor does the power of improving in any manner include a right of destroying the subject susceptible of improvement; on these principles the act for the causeway was a proper, legal, justifiable act, and in no manner resembling the present object of erecting a bridge over the whole river below tide water.

If my reasoning excites a doubt in the minds of this Committee, they will reject this bill; but if I am mistaken, if the right is clearly vested in Congress, then I ask where is the imperious public necessity that demands this measure? Does it arise from the overgrown population of this city? Alas, sir! its silent streets and scattered houses demonstrate the contrary. It trembles to its base, and needs the fostering hand of Government, soon I ardently hope to be given to it. Does this imperious public necessity result from the commercial intercourse between the city and Alexandria? No, sir. The little that exists is borne on its proper element, the water, and would never pass this bridge. Does this imperious necessity proceed from the fertility and produce of the surrounding country? No, sir, our fertile lands are on the margin of the river which floats their produce to either market, and the hills and surrounding country exhibit a strong picture of poverty and health. Where does the fertility of the honorable gentleman's mind find this imperious necessity for a bridge? 1st. In a few bank directors coming to this city from Alexandria to obtain discounts. 2d. In the convenience of summoning jurors from one side to the other, which, by the by, can never happen, the different sides of the river being governed by different laws and courts. When such causes are assigned for such an object, and in some of which the honorable gentleman has been so greatly mistaken, weak indeed must the case be; but far different in reality are the motives which lead to the erection of this bridge. I wish prosperity to the whole of this District, but never can consent to build up one part on the ruins of another.

But it is said the Southern mail is often delayed. True, sir, but the causes most frequently exist on the other side of Alexandria, where miserable bridges, if any, are erected over streams that suddenly swell to torrents, and occasion obstructions to the mail. The operations of Government go on well, and without complaint, which would certainly exist if any serious cause existed. Again, sir, it is said, that the road to Alexandria would be shortened by this bridge. True, sir, but are all our post roads straight? Is it ascertained where the Southern post road is to go? And is it no object to direct a road to call at a town of importance?

Georgetown receives down the Potomac, and exports a considerable quantity of tobacco, and near 100,000 barrels of flour annually. Must a town, rapidly rising in capital and consequence, be struck from the post road? Why this injury to Georgetown alone? Why are not all other towns excluded from the post road because not in a direct line from point to point? And why, sir, I demand, is the post road in its great Southern direction turned to the left to gratify Alexandria? The principal object of post roads is to facilitate the connexion between commercial towns, and Georgetown is not to be sacrificed that Alexandria may receive a mail thirty minutes sooner!

I hope and trust, from the reasons yet assigned, that this Committee will never agree to pass this bill.

The honorable gentleman from Virginia in the zeal of argument has said, the erection of this bridge is a benefit to Georgetown, and the upper country of the Potomac. We thank him for the intended boon, but we are in the habit of judging of what promotes our own interest, and must decline the intended favor. That it will be an injury to Georgetown, no man can seriously doubt. Does not the value of property in a town depend much on public opinion, and does not the sentiment unanimously expressed against this bridge as a prejudicial measure give decisive proof of what will be the consequence? Does not the sensibility of Georgetown attest the people's fears? Pass the bill, and their property will fall twenty per cent. What moneyed capitalist will settle in a town where so general a sentiment prevails so injurious to its interests?

Is not Georgetown destined by nature to become the great depositary of the immense produce of an extensive and fertile country? Is not the Potomac to become the connecting link with the Western waters? and will it not, at no distant day, bear on its bosom a great portion of the wealth of the Western world? Does it not already furnish 100,000 barrels of flour, a thousand of whiskey, a considerable quantity of tobacco; and in the future improvement and settlement of our country, in a state of advanced population, and as I anxiously hope, a great metropolis here, have we not every reason to believe, unless paralyzed by this measure, that Georgetown is destined to be a place of immense commercial con-

sequence? and shall we thus injudiciously blast its future hopes?

A few observations as to the upper country connected with the Potomac. If public sentiment lessens the value of property in Georgetown, will not its capital be lessened? And does not the diminution of its capital injure it as a market? And will not this seriously affect the landed interest above? Can any axiom be more clear than that all the cost, commission, and expenses of carrying an article to a foreign market, falls on the farmer who makes it; the more delays, and the greater difficulty, the more is the injury. A boat of one hundred barrels of flour navigated by five hands, is at the expense of six dollars per day. If no market is at Georgetown, and the boat proceeds to Alexandria, it occupies a day to go, and a day to return, here twelve dollars' expense ensues to store it or place it on board a ship at Alexandria. This increased expense will be entirely saved the owner, if it is stored or shipped at Georgetown. Of all labor-saving machines a ship is one of the greatest, and if loaded at Georgetown will carry 5,000 barrels to Alexandria at an expense that will carry 500 barrels in boats. If the effect of the portage is to destroy the navigation to Georgetown, this increased expense of the portage to market falls entirely on the farmer, for he can only obtain the price of the article, after deducting the labor and expense of carrying it to market, and this expense is greatly increased if the produce be taken by land. The agriculturist of the upper country will have his produce diminished in value by this bridge, if it occasions an obstruction in the approach by water to the natural market at Georgetown; it operates as an internal tax on the farmer to support the moneyed speculator in bridges. My district feels this with sensibility, because to a large portion of it, Georgetown is the principal—nay, the only market. That the erection of the bridge will have this effect, Mr. Chairman, I cannot doubt. This bridge is proposed to be on piles, near a mile in length, with a draw thirty feet wide. In rivers not liable to excessive freshes, where a steady tide ebbs and flows, vessels may without great delay pass draws; but to him who knows the extent of the Potomac, the immense streams that feed it, and the mountains that furnish its sources, it must be obvious that such a bridge and draw can never answer. There is no regular, steady tide, of strength to carry a vessel through the draw, and unless the wind is directly fair, great delay and consequent expense must ensue. Northwest winds, against which a vessel may beat up in a channel of 250 yards, will prevent her approach to the draw; the freshets in the river, which bring the boats down to market will propel the tide below the bridge, and in that event no access can be had against the current to the draw, and the delay and expenses will soon force commerce to a more convenient port.

Is it not doubtful whether any bridge can stand the immense volume of water, which rising at times forty feet above its natural bed, charged with immense masses of ice, shall precipitate itself against the piers? Is it not certain that these piers will accumulate masses of mud, which will inevitably destroy the channel in process of time? Violent rains on cultivated fields bear away such portions of earth in every stream to the Potomac, as make it in all freshes excessively turbid and muddy; the velocity of the river, till it passes below Mason's island, holds in suspension the finer particles, but the river suddenly becoming wider, the velocity is diminished in proportion to its expansion, and an immediate deposition takes place, which will be greatly increased by every obstacle retarding the stream, and of course quickening the precipitation of the sand, mud, and sediment. Sand bars are all formed at the mouths of great rivers which penetrate far into a mountainous country, by an unceasing law of nature—the gravitation of matter; for the force of the current diminished by whatever cause, such as meeting with and opposing the tide below, a greater superficial expansion, or a bridge, the deposition of the matter held in suspension by the momentum of the current begins; sand being of a more specific gravity first precipitates itself, thus bars are formed, and as the river becomes more quiescent, the fine particles of earth in the form of mud deposit themselves, making islands and adding to the soil by alluvium. In this case all these causes will combine to destroy the navigation. Every fresh of this immense river, charged from the mountains and its cultivated banks with a vast portion of feculent matter, propels the opposing tide to near the spot contemplated for the bridge; there the conflict of the current and tide ceasing, produces a quiescent state, favorable to immediate deposition, which is further accelerated by the sudden expansion of the river just above, and will be completely effected below, if this bridge should be erected with a number of piers at every thirty feet over for a mile in extent. The imperishable laws of matter fix the destiny of Georgetown, and the destruction of the navigation of the river, if this law passes.

I can only add that whenever the public exigency shall imperiously demand a sacrifice of private rights, those whom I represent will cheerfully bear the privation, but until some absolutely certain, manifest, public good, shall so require, they have confidence that the wisdom of this House will never exact it.

Mr. Nelson would not delay the rising of the Committee, but the gentleman from Virginia had mentioned as one reason why the bill should pass, that there were two banks on this side and two on the other side of the river. To Mr. N. the multiplication of corporations was one of the most alarming evils; there were already in this district of ten miles square four corporations, and now it was proposed to raise another. What would be the situation of the agricultural people of the United States, if every moneyed man was a member of some corporation? In the State of Maryland, from the influence of banks, turnpike companies, &c., every man became a slave to some corporation or other. The proposed corpo-

ration might receive ten or fifteen per cent. on their stock, out of the pockets of the poor people. Would the House countenance a measure of this kind, which would give so much influence to moneyed men? He hoped they would not.

Mr. SMILIE said, when the Committee considered that a large portion of the inhabitants of Georgetown conceived that their rights would be injured by the proposed measure, and wished for a fair discussion, they would think with him that the Committee should rise and have time allowed them to consider it.

The Committee then rose and obtained leave to sit again.

THURSDAY, November 12.

Two other members, to wit: from Massachusetts, JACOB CROWNINSHIELD; and from Pennsylvania, JOSEPH CLAY, appeared, produced their credentials, were qualified, and took their seats in the House.

The SPEAKER laid before the House sundry documents, transmitted to him by Duncan MacFarland, of the State of North Carolina, relative to his claim to a seat in this House, as a Representative for said State, in the room of John Culpepper; which were referred to the Committee of Elections.

On motion of Mr. DARBY,

Ordered, That the petition of the Baptist Congregation in the City of Washington, praying that an act of incorporation may be passed for the benefit of the said corporation, which was presented to this House on the eighth of December, 1806, be referred to Mr. DARBY, Mr. TAGGART, and Mr. CULPEPPER; to examine and report their opinion thereupon to the House.

Mr. POINDEXTER said, that in the year 1803, a law passed directing the appointment of Commissioners for adjusting claims to lands west of Pearl river, in the Mississippi Territory. It was expected at that time that the business would be completed in twelve months. But it had been found, from the multiplicity of claims, that the business was much more complex than had been expected. The original compensation made to these officers (at the rate of six dollars per day, so as not to exceed two thousand dollars each,) had not been sufficient to reward their services. Application had been made to the Secretary of the Treasury, who declined advancing money without the authority of Congress. For these reasons he moved the following resolution, which was adopted:

Resolved, That the Committee on Public Lands be instructed to inquire into the expediency of allowing additional compensation to the Board of Commissioners for ascertaining claims to lands west of Pearl river in the Mississippi Territory, pursuant to an act for regulating grants of lands, &c., passed in 1803, and that they report by bill or otherwise.

Mr. COOK said, that some late occurrences had determined the nation to oppose resistance against a proud, haughty, and piratical nation. To do this, various means were necessary; what more so than soldiers? As the former services of many were still unpaid, they would find difficulty in procuring them now. The family of the war-worn soldier was suffering for want, while other people were enjoying the recompense so justly due to his toils. In a public capacity, they should act as in a private, by paying all just and honorable debts. To bring this principle into practice, he moved the following resolution, which was adopted, ninety-four members rising in favor of it, and a committee of seventeen appointed accordingly, viz, Mr. COOK, Mr. ELLIOT, Mr. WILBOUR, Mr. J. K. SMITH, Mr. MOSELY, Mr. THOMPSON, Mr. HELMS, Mr. MILNOR, Mr. N. R. MOORE, Mr. CLOPTON, Mr. WILSON, Mr. HOLLAND, Mr. TAYLOR, Mr. SMELT, Mr. J. MORROW, Mr. DESHA, and Mr. WHARTON.

Resolved, That a committee be appointed to inquire if any, and, if any, what description of claims against the United States are barred by the statute of limitations, which in reason and justice ought to be provided for by law, and that they report by bill or otherwise.

Mr. BARKER, from the committee to whom was referred the memorial of the Legislative Council and House of Representatives of the Mississippi Territory, reported a bill to extend the right of suffrage in the Mississippi Territory, and for other purposes; which was read twice, and referred to a Committee of the whole House.

Mr. G. W. CAMPBELL presented the memorial of a number of persons residing in the States of Tennessee and Georgia, praying that they may be incorporated for the purpose of opening and rendering navigable that part of the river Tennessee, in the Mississippi Territory, known by the name of the Muscle Shoals; and also for the purpose of making certain commercial establishments on the head waters of Tombigbee river, adjacent to the Muscle Shoals, and also praying to have the use of a road or roads through the Indian territory, with the assent of the Indian tribes claiming the same.—Referred to a select committee of seven, consisting of Mr. G. W. CAMPBELL, Mr. JONES, Mr. BLACKLEDGE, Mr. BUTLER, Mr. DURELL. Mr. STORER, and Mr. HUMPHREYS.

MARYLAND CONTESTED ELECTION.

The House then resolved itself into a Committee of the Whole on the report of the Committee of Elections, to whom was referred the memorial of Joshua Barney, of the State of Maryland. The report of the Committee of Elections is as follows:

The Committee of Elections, to whom was committed the petition of Joshua Barney, of the city o Baltimore, praying to be admitted to a seat in the House, he having, in his opinion, the highest number of votes given to a candidate legally qualified to represent the city of Baltimore, having carefully examined the facts stated on both sides, aud compared the laws of Maryland under which the said election was held, with the Constitution of the United States, report—

That, by an act of the Assembly of Maryland, passed in November, 1790, it is required that the member shall be an inhabitant of his district at the time of his

election, and shall have resided therein twelve calendar months immediately before.

By another act of the Assembly of Maryland, passed in November, 1802, it is enacted that Baltimore town and county shall be the fifth district, which district shall be entitled to send two Representatives to Congress, one of which shall be a resident of Baltimore county, and the other a resident of Baltimore city.

That Joshua Barney is a citizen of Maryland, and has been a resident of Baltimore city for many years.

That William McCreery has been for many years a citizen of Maryland, and a resident of the city of Baltimore; but that, in the year 1803, he removed himself and his family to his estate in Baltimore county; that, from that time, though he himself has occasionally resided in Baltimore, yet he, with his wife and family, have not made the city their settled residence.

That William McCreery states that his intention was, and still is, to reside with his family on his country estate in summer, and in the city of Baltimore in winter; but that, ever since he has removed his family to his farm, he has been obliged every winter, in the public service, to reside, and frequently with his family, in the city of Washington, which prevented him from removing his family, agreeably to his intention, to the city of Baltimore; but he resided himself in the city of Baltimore five or six days before the election; that he and his family were residing in the same situation, when he was elected to serve in the ninth Congress, that they were, when he was elected into the present Congress; that, however, not wishing to have been taken up as a candidate at the last election, he expressed to some of his friends some apprehensions that exceptions might be made on account of his constant family residence not being in the city of Baltimore.

At the election in that district for the Congress now in session, Nicholas R. Moore had 6,164 votes; he is a resident in Baltimore county: and William McCreery, against whose right to a seat in this House objection is made on account of residence, had 3,559 votes; and Joshua Barney, who claims a seat in this House, and it is admitted is a resident of Baltimore city, had 2,063 votes; and John Seat, also a resident in Baltimore city, had 353 votes. The above statement of facts being admitted by the parties, further evidence was not required. No question was taken on the legal residence of William McCreery in the city of Baltimore.

The committee proceeded to examine the Constitution, with relation to the case submitted to them, and find that qualifications of members are therein determined, without reserving any authority to the State Legislatures to change, add to, or diminish those qualifications; and that, by that instrument, Congress is constituted the sole judge of the qualifications prescribed by it, and are obliged to decide agreeably to the Constitutional rules; but the State Legislatures being, by the Constitution, authorized to prescribe the time, place, and manner of holding the elections, in controversies arising under this authority, Congress are obliged to decide agreeably to the laws of the respective States.

On the most mature consideration of the case submitted to them, the committtee are of opinion that William McCreery is duly qualified to represent the fifth district of the State of Maryland, and that the law of that State, restricting the residence of the members of Congress to any particular part of the district for which they may be chosen, is contrary to the Constitution of the United States: therefore,

"*Resolved*, That William McCreery is entitled to his seat in this House."

Mr. FINDLEY said, that being chairman of the Committee of Elections, it became his duty to explain the principles by which that committee were governed in making the report, but being apprehensive that he could not make himself extensively heard, he would not detain the Committee long. The Committee of Elections considered the qualifications of members to have been unalterably determined by the Federal Convention, unless changed by an authority equal to that which framed the Constitution at first; that neither the State nor the Federal Legislatures are vested with authority to add to those qualifications, so as to change them. That the State Legislatures cannot prescribe the qualifications of their own members is evident, it is believed, from their respective constitutions; and that they are authorized to judge of the qualifications of their own members by their own constitutional rules only, and of the election of their own members by their respective election laws, must be admitted. Congress, by the Federal Constitution, are not authorized to prescribe the qualifications of their own members, but they are authorized to judge of their qualifications; in doing so, however, they must be governed by the rules prescribed by the Federal Constitution, and by them only. These are the principles on which the Election Committee have made up their report, and upon which their resolution is founded.

A state of facts is fairly given; no witnesses were introduced, nor corrupt abuses in conducting the election alleged. The claim of the petitioner was solely founded on the laws of Maryland, and on the allegation that the sitting member was not qualified agreeably to these laws, that though he resided in the district for which he was elected, yet he did not reside in that part of it which the law of Maryland had prescribed in addition to the qualifications prescribed by the Constitution of the United States. It will be observed by the report itself that the committee did not decide on the allegations for or against the sitting member's legal residence in the city of Baltimore, but upon his Constitutional qualifications, and the majority of legal votes. On all the facts stated in the report, however, the parties themselves were agreed, not only in stating the case, but on the final revision of the report.

The committee however submitted the question and took the vote on the case only as it related to the fifth district of the State of Maryland, viz: Baltimore city and county, which were by the law of Maryland entitled to send two members, one of which was to have resided in the city, and the other in the county, twelve months immediately preceding the election. Mr. McCreery, the sitting member, as he stated, and which was admitted, had removed his family to his country seat for their summer residence, with intention to have returned to the city in winter; but having every winter to reside at the City of Washington as a member of Congress, where he frequently brought his family, prevented him

from residing in the city of Baltimore in the winter.

It appeared to the committee, that if the State Legislature had a right to prescribe in what part of the same district, and for what length of time, each of the Representatives should reside, they had also a right to prescribe in what street or what house of a street they must reside, and for what length of time. Having thus far endeavored to explain the principles by which the committee were governed in making their report, on which no doubt other members of the committee will give further information, or support such as I have given, I will proceed to other circumstances.

It is proper to inform the Committee of the whole House, that the Committee of Elections were not unanimous in these sentiments. The minority advocated the right of the State Legislature to prescribe additional qualifications to the members from the respective States; that the qualifications prescribed by the Federal Constitution were only of a negative or restraining nature, viz: to enable Congress to consider such members as had not resided seven years in the United States, who were not twenty-five years of age at the time of their election, and inhabitants of the State for which they are elected, as disqualified, but not to be considered as restraining the State Legislatures from adding such qualifications as they thought proper.

Mr. F. said that he would detain the Committee a little longer, in order to make a few observations, but he wished these observations to be considered as his own, and not as those of the Committee of Elections. That committee had decided only on the local case of the fifth district of Maryland, but his observations were intended to apply to the principle generally. The qualifications of the National Legislature are of a national character, and as such must be uniform throughout the nation, and prescribed by the authority of the nation, and by it exclusively; but no State Legislature is vested with national authority, they cannot make citizens for the nation, nor prescribe qualifications either for citizens or for Executive officers of the nation, much less can they prescribe qualifications for the National Legislature, other than the nation itself has prescribed, nor abridge the Constitutional power of Congress to decide on the qualifications of its own members, agreeably to the rules prescribed by the Constitution; that authority, expressly vested by the whole, cannot be abridged or changed by a part—by a seventeenth part of the nation.

It is a fundamental principle in a free government that the citizens should be protected in the enjoyment of all their natural rights, except in so far as the enjoyment of these rights are incompatible with the safety of society, and consequently with the support of a free government. It is the natural right of all men to choose whom they please, without regard to age, residence, &c., to represent and advocate their interests; but it is necessary for the protection of society that this right be abridged, but it ought to be no further abridged than is absolutely necessary for the safety of the society, and of this the society itself are the only competent and authoritative judges; and in the United States the society have decided on this principle by their general and ratifying conventions, and they have delegated no authority even to Congress, much less to States, to alter or add to or diminish these qualifications. The Federal Constitution indeed provisionally delegates to the State Legislature the authority of directing the time, place, and manner of holding elections at the discretion of Congress. It is not necessary nor convenient that the time, place, and manner of holding elections should be uniform, therefore nothing but abuses or usurpations of power by the States, can ever excite or justify Congress in assuming the exercise of it, which, however, they may do at discretion.

The right of prescribing new or additional qualifications of members of Congress, is not a question between the Federal and State Governments; it rests between the State Legislature and the people. The Federal Constitution has declared that the citizens of every State have a right to exercise their free choice in voting for men having the qualifications therein described; but some of the State Legislatures say they shall not enjoy that right, but shall be obliged to vote for members with such qualifications as we shall from time to time prescribe; that we have a right to prescribe what qualifications we please, and change them as often as we please, &c. The question before the Committee of the Whole is, whether or not every State Legislature has a right to abridge the people's right of choice of a member to represent them in Congress to what extent they think proper, and whether Congress, in the exercise of its judicial power of judging of the qualifications of its members, is bound by the various and changeable additions made by individual State Legislatures, or by the permanent and uniform rules prescribed by the Constitution which both they and the State Legislatures have sworn to support. In deciding agreeably to the Constitutional rule, Congress is not increasing its powers, nor encroaching on the powers of the State Governments. It is only exercising its Constitutional authority in protecting the rights of the citizens against the encroachment on their liberties by their own State Legislatures, and in preserving uniformity of qualifications. Most certainly the Constitution secures to every citizen who has a right to give a vote, a right to give that vote to any citizen constitutionally qualified whom he pleases. The law of Maryland says they shall not have that liberty, they shall vote only for a man who notwithstanding his having resided seven years, or probably all his life in the United States, has not so resided in a particular part of a district. They are entitled to elect two members, but shall only vote for one of them on one side of a given line, and for the other, on the other side, though they possibly might have resided not many perches apart; but it is not so much the varied changea-

ble qualifications that have been prescribed as the variety and uncertainty of what on this principle, if admitted, may be made, that renders it so highly objectionable.

Mr. F. said, there was ground to believe that but few State Governments had taken this ground; he was certain several States had never set up such a claim. He would, however, only now instance Pennsylvania, the State which he had the honor to represent. When the Federal Government went into operation, the question of qualifications was very seriously and deliberately discussed in the Legislature of that State. They were divided into parties on the question. Some, and indeed the majority, believed and decided that the Constitution could only admit of a general election. The difference of opinion continued, but before the next election the State was divided into districts, but in the election for the third Congress the members were voted by a general ticket; finally, all the parties agreed that while prescribing the manner was intrusted to the State Governments, the State might be represented by districts, or by a general election, as might seem expedient, but that either way it must be done agreeably to the Constitutional rule, that votes might be given for any qualified inhabitant of the State. It is but in very few instances indeed that a member has been elected over the line of the district for which he was chosen, and these few instances were not only the most popular, but the most beneficial. Pennsylvania still continues to act on that principle, believing she is bound by the Constitution to do so, and no complaint has ever been laid before Congress from that State on the principle now contended for. The honor of the district and the influence of the candidates are always sufficient to secure the representation in the district, unless the advantage of going out of it is very evident. In that State, where some districts are entitled to send three members and others two, the parties generally plan to have the candidates distributed to promote the success of their ticket, but where this does not succeed, no harm is done, the Constitutional rule is not infringed, and the people are contented.

The Constitution is the bond of union between the people of the United States; to make this bond complete it was necessary that there should be a uniform rule of naturalization and a uniform rule of qualifications for the people's Representatives in Congress; both these rules have been established by the Constitution, and it is by the Constitutional rule alone that Congress can decide on the cases arising under them. If this is not the case, Congress have no uniform rule to decide by.

To talk of inconveniences resulting from the rule, is to no purpose to our decision, for we are not authorized to make a Constitution, but to decide agreeably to the rule already prescribed; however, in stating the inconveniences, they are generally extreme and improbable cases, such as have never happened to the States that have adhered most closely to the prescribed rule, nor are ever likely to happen; but the dangers and inconveniences of departing from any uniform rule of qualifications are obvious. The members of different States will have different, or even inconsistent qualifications, such as would disqualify a member from serving in one State who would be well qualified to serve in another State. Those States which adhere to the Constitutional rule would be represented differently from those who do not, and those differently from each other; and with them there might and probably would be changes without end or certainty.

But, Mr. F. said, it was not his intention at this time to enlarge in a detailed manner, he had no doubt but that this would be sufficiently done in the course of the discussion by others. He would, however, observe that the power of prescribing additional qualifications has not by the people in their conventions been granted to Congress, nor does Congress claim or pretend to exercise it. They have not, either by the federal ratifying conventions or by the State constitutions, vested that power in the State Legislatures. Whence then did the State Legislatures derive this right of making supplements to the qualifications prescribed by the Federal Constitution? Not from the people, in any known manner.

The Federal Constitution has restrained the natural rights of the people with respect to the qualifications of their Representatives as far as was then thought necessary for the safety of the Union, and no further. The State Legislatures are corporate bodies, they do not act by natural right, they are restrained by both the State and the Federal Constitutions. The power of prescribing qualifications either for members of the State Legislatures or of Congress, has not been vested in them, therefore, whenever they exercise this authority they do it by an assumption of unauthorized power. The State or Federal Legislatures possess no original rights, but only such as are derivative and representative. All original powers are naturally and originally in the people, and every assumption of the powers and rights belonging to them is an encroachment on the sovereignty which the people have retained in their own hands.

Let it not, however, be said that no power to prescribe additional qualifications exists in the United States; if it does not exist in the State Governments, it exists in the people of the United States, who are the real sovereigns, and is by them transferred to the State Legislatures, and to Congress, two-thirds of both agreeing; in this way several amendments to the Federal Constitution have been made, and more may be made, or the people may call a Federal Convention, but a State Legislature was never authorized to abridge the Constitutional liberty of the people in voting for their Representatives.

Mr. F. said he had never heard the opposite doctrine advocated but by introducing extreme and improbable cases, such as had never happened in States which adhered strictly to the Constitutional rule, nor were likely ever to happen. Such as, that if the people were admitted to vote for any inhabitant of the State duly qualified agreeably to the Constitution, they might, or would

vote for an idiot, a madman, or an infamous character, or would vote for all the members to represent the different districts of a large State, out of one district, &c. He said that these objections required but a very short answer. In the States who adhered to the Constitution no one instance of that kind had happened, and if ever it did happen, it would be an indubitable proof that the people who did so, were either idiots, madmen, or infamous characters themselves, and, therefore, totally disqualified to be citizens of a Republican Government, and only fit to be slaves to a master; and that those who made use of such arguments only did so to save the people from their worst enemies, themselves. To this he was not prepared to give his assent.

Mr. STURGES said that the report, now before the Committee, presented two questions for their consideration—1. A question of fact; 2. A question arising under the Constitution of the United States, or, in other words, from comparing the law of Maryland with that instrument. As he was one of the Committee of Elections, and joined in the opinion which was reported, he was saved the necessity (in consequence of the view they had of the question) of considering the question of fact. He would, however, make one observation respecting the question of fact, which was, that whatever declarations Mr. MCCREERY might have made, or whatever doubts he might have expressed previous to the election, as to his right of being a candidate, if he had been in an error, it could, upon no principle with which Mr. S. was acquainted, affect his right.

As to the second question, Mr. S. said he knew of no clause of the Constitution which could have a bearing of any importance upon it, except the second clause of the second section of the first article, which was in these words: No person shall 'be a Representative who shall not have attained 'the age of twenty-five years, and been seven years 'a citizen of the United States, and who shall not, 'when elected, be an inhabitant of the State in 'which he shall be chosen." In this clause, they found that the framers of the Constitution had enumerated the qualifications of the candidate. He would answer, that, when the framers of the Constitution undertook deliberately to enumerate the qualifications, it was presumable they meant that no others should be necessary. It was not by any means a necessary, but, as Mr. S. conceived, a forced application, that, because the States were not prohibited in express terms, they did possess the right. The implication was, in his opinion, directly the reverse. But it had been said, and would undoubtedly be urged, though it had not yet been stated in the debate, that whatever powers were not expressly denied in the Constitution to the States, or, in other words, what had not expressly been granted by the States to the General Government was retained by the States. He acceded to the correctness of the position generally. But a distinction was to be observed in those cases where, from the nature of the subject, there was no incompatibility; where there was no clashing in the concurrent exercise of powers by the General and the State Governments, the principle would apply; but in those cases where, from the nature of the subject, there would be an incompatibility, the principle did not, and ought not to apply. For instance, in attending to the Legislative powers granted to the General Government by the eighth section of the first article of the Constitution, they found that Congress had the power "to lay and collect taxes." In this clause, the same power was not denied to the States, and it was retained by them. But, why? Because, from the nature of the subject, there would, in its exercise, be no interference with the General Government. In the seventh clause of the same section and article, Congress have the power "to establish post offices and post roads." A power over the same subject was not in express terms denied to the States. But had the States a right to establish post offices and post roads? He answered, no. Why not? For the reason and on account of the distinction he had mentioned—because, from the nature of the subject, were they to exercise the power, there would be an interference with the powers of Congress; and there would be a serious inconvenience; for it was desirable, and indeed indispensable, that there should be a uniformity in the laws regulating post offices and post roads. So in the case now before the Committee. Should the States be allowed the power to determine the qualifications of the elected, more especially where they have the right to superadd, after the Constitution had enumerated certain qualifications, that incompatibility, that interference of powers which he had mentioned would exist.

Will gentlemen attend to the consequences of the doctrine they contend for against the acceptance of the report? If the States had a right to superadd, why might they not say, by law, that the candidate should have an income of $10,000 per year? Why not, if they should think it expedient, apportion the number of Representatives to which they are entitled, among the different professions of the community? Why not say that a certain number should be physicians, a certain number lawyers, and a certain number clergymen? Why not say that the candidate should be an inhabitant of the particular State any number of years he pleases—say twelve or any other number—although, by the Constitution, a residence of seven years within the United States is sufficient? Why not say he should profess certain political principles? Why not that he should possess certain moral qualifications? Or, to come more nearly to the particular case now under consideration, if they had a right to restrict the residence to a particular town in the district, why not to a particular street in that town, or even to a particular house? Were gentlemen prepared to admit these consequences? Or would they say these were extreme cases? He asked them, on his part, to designate in their doctrine the line to which the States might go, and which they might not pass. He found there appeared to be an alarm excited as to the validity of district elections, as practised in many of the States. That question was not now before the Committee; but, respecting it, he

remarked that the States had a right to adopt regulations relative to the "times, places, and manner of holding elections;" and it was not by any means clear, that restricting the residence of the candidate within the district was not a right vested in the States by the term "manner." Besides, the States had a right to send one Representative for every 33,000 inhabitants. Now, if the States had a right, by virtue of the power to determine as to the "manner," to say that a certain number of the electors included within a certain district shall vote together, it seemed to be reasonable that the candidate should also reside in the same district. But, granting that the doctrine urged in favor of the report should be attended with the consequences which had excited the alarm, yet he trusted, if the argument was a sound one, as to the particular case now under consideration, that it would not be rejected.

Being, as he before observed, one of the Committee of Elections, and of the opinion of the majority, he felt it incumbent on him to assign the reasons for his opinion.

Mr. RANDOLPH said he had been informed by a member of the committee, yesterday, that the printed report was extremely defective. The report was not laid on his table till yesterday; and he did not think the members had yet had time to form their opinions on so momentous a question. He therefore moved that the Committee rise.

Mr. SMILIE remarked that this was a question which had never yet been decided, although very important. He wished the Committee not to rise so soon; for time could not be more usefully employed than in discussing it.

Mr. SAWYER said, that as the facts which had been reported by the committee did not go far enough to prove that Mr. McCreery was a resident of the city of Baltimore, as the laws of Maryland required, he thought they might be permitted to take it for granted that he was not, notwithstanding the committee have drawn an inference contrary to the evident tenor of those facts. In regard to the *ex parte* representation of Mr. McCreery, which they had thought proper to superadd to this special verdict, from which they were to argue the Constitutional law, even if it were properly verified, it would add very little to the proof necessary to establish that qualification; because it merely stated that Mr. McCreery had expressed an intention of becoming a resident of the city of Baltimore, but had not carried that intention into effect, further than he could be said to do by a residence of five or six days. The only part therefore of the report of the committee which merited their attention, was that which involved the constitutionality of the Maryland law. As the second section of the first article of the Constitution of the United States related to this subject, he asked that it be read for the information of the House. [Here the Clerk read that part of the Constitution.]

By this article, it appeared that the general qualifications specified are, that a person, to become eligible to a seat in this House must have arrived at the age of twenty-five years, have been seven years a citizen of the United States, and twelve months a resident of the State from which he was to be elected; leaving, as might be naturally supposed, to the States respectively, the addition of such other particular qualifications as they might think proper to impose, not incompatible with those fundamental ones laid down in that article. This clause might be considered the text from which each State might make a practical commentary not at variance with the letter of it. But it was contended by the chairman of the committee, (Mr. FINDLEY,) that those positive qualifications assumed by that article of the Constitution contained a negative prohibition to every State of the right of imposing any others. Mr. S. said he was not prepared at present to grant any rights under the Constitution but such as had been stipulated for by express provision. He should by no means consider himself justifiable in surrendering one of the most essential rights of each State, (and of his own among the rest,) by mere implication. So far as an effective operation of this clause depended upon a latitude of construction, he was perfectly willing it should have it; but there was not the least necessity for such a construction in the case, because an inclusion of the condition of a residency in a State was not an exclusion of a residency in a district; and a State, by annexing the latter condition to the former, did not in any respect affect the full operation of that clause of the Constitution, according to its sense, expressed or implied. There was no necessity, under the most liberal construction of this article, to suppose that a residency in a State should supersede the necessity of a residency in a district. So far from the views which the framers of the Constitution had being thwarted by a construction of the kind he contended for, it would be the means of more completely carrying them into effect, unless it could be supposed that a person's being better qualified than the Constitution required should disqualify him altogether; for undoubtedly the surest, and in fact the only way of becoming a resident of a State, was to become a resident of a district—for every State was composed of districts.

But even supposing that they should be impeded in their progress by the difficulty which a construction either way would produce, in rendering a negative injury to the Constitution, or a positive one to the States, still their doubts would be dispelled and their progress made easy by another clause in the Constitution, and which was added for the express purpose of clearing up all doubts that might arise under its interpretation. It was this: whatever powers and authorities are not expressly delegated by the Constitution to the United States, or necessarily arising under it, shall be reserved to the States themselves, or to the people. Now, he hoped that a mere commencement to exercise a certain power under the Constitution was not to be considered as a complete termination of it, with regard to the States. A right could not be said to be delegated absolutely, which may be exercised conjointly. He thought, therefore, that he could lay it down as an undeniable rule, that the right which each

State had to require a person to become a resident of the district for which he may be elected, was not delegated expressly by the Constitution, for there were no words in it to that effect, neither did it flow from a necessary operation of any of its provisions; therefore, it must belong to the States themselves, or to the people.

It might as well be said that no State had a right to lay itself out into districts, as to say the Constitution denied them the right to elect persons who must become residents of those districts. Every argument which went to show that this right could not be enjoyed by a State, went equally to prove that their mode of dividing States into districts, and the elections which were made to that House accordingly, were fundamentally wrong and unconstitutional; because those divisions were marked out as the only practicable mode by which persons could acquire that qualification which the State of Maryland in this instance, as well as most of the States in similar instances, had thought proper to create. This qualification the law of Maryland expressly stated to be, that one of the persons to be elected from the district of Baltimore should have been a resident of the city twelve months immediately previous to the election. Mr. McCreery was not a resident of the city one year previous to the day of election, therefore he could not be entitled to a seat in that House. Independent of the right which the State of Maryland had to impose this qualification, in a general point of view, she had particular reasons for the application of it in this particular point. Baltimore was a rich, growing, commercial city, and her interests were too important to go unrepresented on that floor. But, in the exercise of that right, they might observe the utmost liberality on the part of Maryland, for she conceded the right to the county, exclusively, of appointing a Representative who was a resident of the county, at the same time she wished to enjoy a similar right. In other large commercial districts, they observed the representation was altogether from the cities. Philadelphia, for instance, enjoyed that advantage over the counties of her district, which her superior population afforded her, by sending three Representatives to this House. But Baltimore, by a spirit of magnanimity, was disqualified from the enjoyment of any other privilege than what was exercised by the county, though in a little time her increasing population would enable her to enjoy a similar advantage with Philadelphia. How little this moderation in the equal distribution of a favor deserved the total abrogation of it on her part, must readily appear, upon any grounds of common justice; but if it were not extended to her from the peculiar hardships of her case, Mr. S. trusted it would be conceded to her, according to the political rights enjoyed and expressed by the State of Maryland. He was the more earnest in this case, because, while he advocated the rights of the State of Maryland, he felt for those of his own State, which might at a future period be jeopardized like those of the devoted city of Baltimore.

The conclusion which he drew from the premises was this: the State of Maryland had a right to impose this qualification, because it was neither expressly delegated nor impliedly assumed under the Constitution of the United States; she had exercised this right by declaring that the city and county of Baltimore should elect one Representative each. The county of Baltimore, in pursuance of this regulation, had given a majority of its votes to Nicholas R. Moore, and the city of Baltimore had given a majority of its votes to Commodore Barney, who, in his opinion, was as legally entitled to his seat as Mr. S. himself, or any other gentlemen on the floor. The whole dispute rested between Mr. Moore and Mr. McCreery, who should obtain a majority of the votes of the county, leaving the city entirely out of view, as neither of them could represent her, not being residents therein. As the majority had fallen on Mr. Moore, he has been duly elected, and the county had no right to send Mr. McCreery here also; for if she could elect two Representatives, she could with the same propriety elect three or four, or a dozen, which would be absurd. He therefore hoped and trusted the report would not be agreed to.

Mr. RANDOLPH said he would withdraw his motion for the Committee to rise, as he perceived gentlemen persist in debating the merits of the main question.

That House had never been called upon to make a more important decision than the one now proposed. He wished he was prepared for the discussion. He had scarcely run over the report of the Committee of Elections; but it was one of those questions upon which his mind had been so long unalterably fixed, that he could not refrain from the endeavor to warn the Committee of the dangerous ground which they were invited to tread. In undertaking to decide upon the validity of the law of the State, they touched upon a subject which should never be approached but under the most imperious necessity, and where no shadow of doubt could hang upon their decision. It might be said that with the *reasoning* of the report they had nothing to do; it was the committee's reasoning, not theirs; that they acted on the naked resolution only. But it was obvious to the meanest capacity, that when the committee thought the fact of Mr. McCreery's residence in Baltimore so unimportant that no question was taken upon it, and grounded their resolution solely upon the unconstitutionality of the law requiring it, that House could not affirm the resolution without affirming, at the same time, the only point upon which the committee had decided in favor of the sitting member. What were they required to do? To declare the law of Maryland, long reverenced and obeyed, under which successive elections had been held, and never before questioned—to pronounce this law to be a dead letter, entitled to no respect, even from her own citizens, and to absolve them from all obedience to it! Was it matter of surprise that the members of the House were startled at an innovation so daring and so dangerous? He had laid it down as a principle not to be questioned, that Congress should never un-

dertake to pronounce upon State regulations, but in cases too clear to admit a contest, and where the decision could not be evaded without manifest detriment to the public good. If he were called upon to establish a criterion, an infallible touchstone of the soundness of political principles, it should be made to consist of nothing so much as a sacred regard for the rights of the States. An enlarged and liberal construction of State rights was, with him, an indispensable requisite, and he could never give his confidence to a politician indisposed to such a construction. He viewed the proposed measure but as the commencement of a series, as the entering wedge. If they began with declaring one law of one State unconstitutional, where were they to stop? They might, they would go on (it was the natural tendency of power never to be satiated as long as there was anything left to devour) until the State Governments, stripped of all authority, rendered contemptible in the eyes of the people for their imbecility, and odious for their expense, mere skeletons of Governments, the shadows of their former greatness, should be forever abolished, and a great consolidated empire established upon their ruins. Mr. R. looked forward to such an event as the death warrant of the existing Constitution, and of the people's liberties. If they wished to preserve the Constitution, they must learn to respect the rights of the States, and not bring the whole artillery of the Federal Government to bear upon them.' In such a contest, the States must fall, and when they did fall, there was an end of all republican government in the country.

The second paragraph of the second section of the first article of the Constitution had, to his extreme surprise, been construed by the Committee of Elections as restricting the States from annexing qualifications to a seat in the House of Representatives. He could not view it in that light. Mark the distinctions between the first and second paragraphs. The first is affirmative and positive. "They shall have the qualifications necessary to the electors of the most numerous branch of the State Legislature." The second merely negative. "No person shall be a Representative who shall not have attained the age of twenty-five years," &c. No man could be a member without these requisites; but it did not follow that he who had them was entitled to set at naught such other requisites as the several States might think proper to demand. If the Constitution had meant (as was contended) to have settled the qualification of members, its words would have naturally ran thus: "*Every person* who has attained the age 'of twenty-five years, and been seven years a citi-'zen of the United States, and who shall, when 'elected, be an inhabitant of the State from which 'he shall be chosen, shall be eligible to a seat in 'the House of Representatives." But so far from fixing the qualifications of members of that House, the Constitution merely enumerated a few *disqualifications* within which the States were left to act. It said to the States, you have been in the habit of electing young men barely of age; you shall send us none but such as are five and twenty: some of you have elected persons just naturalized; you shall not elect any to this House who have not been seven years citizens of the United States. Sometimes mere sojourners and transient persons have been clothed with legislative authority; you shall elect none whom your laws do not consider as inhabitants. Thus guarding against too great laxity in the State regulations, by general and negative provisions, leaving them, however, within the limits of those restrictions, to act for themselves; to consult the genius, habits, and if you will, the prejudices of their people.

The first paragraph which he had read was positive and affirmative. By it, *every* person having the qualification requisite to an elector of the most numerous branch of his State Legislature, was entitled to vote for members of the House of Representatives. Yet, nevertheless, the qualification rested with the State. They might make it a part of the qualification of an elector, that he should reside within his district, county, or borough. Would it not be absurd to say that a man might take his seat in that House, who, at the same time, was not qualified to vote for a member of it? It had always been supposed that the elected should possess higher qualifications than the elector; yet here it would be entirely reversed. And why should it be supposed that whilst the Constitution had vested in the State the greater power, that which was most capable of abuse, the unlimited right of prescribing the qualifications of the voter, it had denied to them, by a forced implication, the right of prescribing the qualification of the person voted for, having respect, however, to the disqualifications enumerated in it? The construction of the Constitution, for which he had contended, was so obvious and natural, that it had been adopted by the States, and acted upon from the commencement of the Government, without any man dreaming of, or starting an objection to it. And the uniform practice of near twenty years, and the laws of the States in which the practice originated, were to be overturned at once, with as little ceremony as they would change one of their rules. If the doctrine of the Committee of Elections be sanctioned, Mr. R. said he did not know by what authority he himself could claim his seat. The law of Virginia, under which he held it, was equally unconstitutional with the law of Maryland. Indeed, it might be demonstrated, perhaps, that we had been living for years under an unconstitutional Government. Laws could not be valid which were passed by persons unconstitutionally elected. We should rip up the Government to its very foundations. The State of Virginia appointed her electors by a general ticket, (to keep out the heathen,) but each elector was to come from a particular *district*, notwithstanding twenty-four separate districts sent twenty-four electors by general ticket. If the State had no right to prescribe that the elector should be a resident of his district, the President had been unconstitutionally elected, in the first instance, by the electors, and in the second by members of that House voting by States, which

members themselves had no right to their seats, the law under which they were appointed being null, void, and of no effect. Were gentlemen prepared for such conclusions as these?

Mr. R. said a gentleman from Maryland had obliged him by calling his attention to that article of the Constitution which enjoins that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." Now, if it were laid down as a principle that the State had no right to require the residence of a member of that House within his district, the whole representation of Maryland might be taken (as they would be taken) from the town of Baltimore. Transient persons from other States, happening to arrive at Baltimore on the day before the election, who, if elected, would declare their determination to become permanent residents, might be returned as members of that House, and must maintain their seats under this decision. The House of Representatives would become a mere shadow, a mockery of representation; not such as the people were attached to, in support of their claim to which they had bled, but such a representation as an English lawyer allowed us to possess in the British House of Commons, when he discovered that the different grants in America, being held as part and parcel of the manor of East Greenwich, all the Colonies were represented by the knights of the shire for Kent. He believed they would possess just as much knowledge of the interest of their constituents in the one case, as has been exhibited in the other, and would demonstrate the same sort of care of their persons and purses. Mr. R. said he held residence within the body of the county or district, to be of the very essence of representation. To be a good Representative, a man must not only reside among the people, he must be one of them, bound to them by every tie of habit, interest, and affection; not a stranger, having no common feeling with them, known to them only by report, and imposed upon them by cabal, intrigue, and corruption.

He believed there were no gentlemen of that House who had maintained a more uninterrupted harmony with each other, than that which subsisted between himself and the two gentlemen from Baltimore, (Messrs. Moore and McCreery.) Their whole intercourse had consisted of an interchange of civilities and courtesies. But this could not affect his opinion upon the present question. But whilst he thought Mr. McCreery certainly, and Mr. Moore *possibly*, not entitled to a seat, he could not agree with a gentleman from North Carolina, that Mr. Barney was duly elected. He would never consent to a man's sitting in that House upon the votes of a minority of the qualified electors of his district. He respected the rights of the people not less than the rights of the States. If a majority of the electors had voted for an unqualified person, believing him to be qualified, he believed the election should be set aside, and it should be put into the power of the people to send the man of their choice, who should be duly qualified. Mr. R. said that the votes not being given in exact conformity to law, perhaps the whole election should be set aside; but he inclined to the opinion that Mr. Moore was duly elected as the county member; that the votes given to Mr. McCreery were under the idea that he still continued a resident of the city; that, being unqualified, his seat should be vacated, and a new writ issued to fill the vacancy.

If the report of the Committee of Elections should be affirmed, it would be an era in the history of this Government. For the first time, and when the nation was supposed to be under the guidance of men supposed to be friendly to the interests of the States and people, the law of a State was to be declared unconstitutional. Before the Committee undertook to pronounce this sentence, to set this awful precedent, it behooved them to pause and consider well. This decision, said Mr. R., will not be final. It will be but the forerunner of a long series of acts, abrogating the laws and usages of the States, endeared to the people by habit, and sanctified by reason. Before you enter upon this fatal act, be you well assured that the right is indisputably your own, and that you are called upon to exercise it by considerations which it would be criminal to resist. Beware lest, whilst you proudly assert your power, you do not meet the reprobation of the great body of the American people.

Mr. J. CLAY felt as high a respect for the rights of States and citizens as his friend from Virginia; but at the same time differed from him as to the construction of the Constitution. It was true that the Constitution was not affirmative; it was true that it decided the qualifications of Representatives in vague terms. The Constitution said, "No person shall be a Representative who 'shall not have attained to the age of twenty-five 'years, and have been seven years a citizen of the 'United States, and who shall not, when elected, 'be an inhabitant of the State in which he shall 'be chosen." Would his friend from Virginia say that the States had a right to narrow this ground? He believed not. The case was precisely the same with respect to the election of the President. "No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of the Constitution," &c. He presumed that mere transient persons passing though a State, or residing in a State for a short time, could not be elected.

If the Legislature of the States had no Constitutional right to narrow the qualifications, they had no right to superadd to them.

While up, he would notice an error which the gentleman from North Carolina had fallen into, as to Philadelphia having three Representatives; there was one from the city, one from the county, and one from the county of Delaware; this, it was true, did not detract from the merit of his reasoning, but still it was an error. There was another argument of the gentleman, which deserves consideration. It was, that a person might be elected who was not a resident of the district, and who was not entitled to vote as an elector. He believed that an instance of this kind had oc-

curred in the representation from Pennsylvania; and perhaps, it would be admitted that although, in Virginia, none but freeholders vote at elections, a man might be a member of that House, and not a freeholder. This had been said to be the first case in which the rights of the States had been tried on that floor. The Committee would recollect that, in the first session of the ninth Congress, Cowles Mead was returned as a member of that House; the election was disputed, and Mr. Spaulding was declared by this House to be duly elected. Mr. Mead was returned as elected under a positive statute of the State of Georgia, which directed that the returns should be made in a certain time, and that all the returns made after that time should be void. What was the decision of the House? That no State had the power of making laws, to decide upon the returns of members of Congress. If it were decided that the States had not a right to interfere with the returns, how much more clear was it that they could not interfere wtih the qualifications.

The Constitution of the United States gave to the people the right of making an election of members of Congress from all the inhabitants who were within the State. He believed the question involved the liberties of the people. If they decided the State had a right by law to add to the qualifications of Representatives established by the Constitution, they decided that the right of the people to choose out of the whole State might be taken away, and the liberty of election thus abridged.

Mr. Smilie said he would not detain the Committee long. The gentleman from Virginia seemed to be exceedingly warm with respect to the rights of the States, as interested in the pending decision. With respect to the rights of the States, nobody who knew him ever doubted his opinion. When the Constitution, which he held in his hand, was adopted by the State of Pennsylvania, because it encroached too much on the State rights, he had voted against it; his country had decided otherwise, and it was now become the law of the land. He had taken an oath to support that Constitution, and, however favorable he was to the rights of the States, he must adhere to that oath. He would make one preliminary remark; that there was a principle in a Republican Government, of as much importance as any other, as respected the safety of the Government, that the qualifications of the people elected should be firm, steady, and unalterable. If, by rejecting this report, they sanctioned a contrary principle, they could not tell how they might be represented at a future time. By the first clause of the second section of the first article of the Constitution, (to which Mr. S. referred,) it was fixed with a precision which could not be controverted, what were the qualifications of voters; with respect to residence, could anything be more precise than the provision contained in the second clause of the same section? Now, if they rejected the report of the Committee of Elections, they would say that the States might abridge those qualifications which the Constitution provided. By the Constitution of the United States, every citizen having the qualifications pointed out in that instrument was qualified to serve as a member of this House. If they rejected the report of the committee, they would say that persons, although possessing the qualifications laid down by the Constitution, could not be entitled to a seat. Had they a right to do it? Mr. S. said there had been a good deal said about negative or positive declarations in the Constitution. Would the gentleman say that the States had a right to pass laws of naturalization contrary to those of the United States, and to the provision of the Constitution which directed that they should be uniform? Many articles in the Constitution pointed out the same principle.

But dangers had been talked of with respect to the States, if this report were adopted. Mr. S. thought dangers of more magnitude might arise from its rejection. He believed if they allowed the State of Maryland the power of abridging these rights, it would be the most unlucky event that had taken place since the institution of the Government. He hoped the contrary.

Mr. Fisk said there was one part of the Constitution, applicable in the present discussion, which had not been noticed. He alluded to the fourth section of the first article: "The time, places, and manner," &c. Mr. F. would only ask the gentleman from Virginia, who had so ably defended the rights of the States, if the power of Congress was not co-equal and co-extensive with that of the States? Congress might alter and prescribe the rule of elections so far as respected the time, *manner*, and place. If the gentleman contended that the States had a right to fix qualifications, he must also admit that Congress had the same right.

Mr. Randolph said that, lest he should be unable to attend the next day, he would, before the Committee rose, suggest, more particularly to the members of the Southern States, one of the consequences which might flow from the construction of the Constitution contended for by his friend from Pennsylvania. He knew the temper of that gentleman's mind so well, that if, upon a more mature consideration of this subject, he should see the fallacy of the position which he had advanced, he would have the candor to retract it; and he felt such confidence in the excellence of his friend's understanding, and the purity of his intentions, that he did not despair of his conversion. On a former occasion, when a bill to prevent the introduction of Maroon negroes into the United States from St. Domingo was pending, its most important provisions were opposed and defeated on the ground of its interfering with the established privileges of the people of color in certain States, who might be, and in fact were, mariners. They were then told, and no doubt truly, that the laws of a certain State knew of no distinction amongst its *citizens*, and gentlemen opposed it, as infringing the rights of their *constituents*. Let this fact be taken in connexion with that clause of the Constitution which secures to the citizens of each State the privileges of citizens of the respective States, and then deny

to the States the power of superadding any qualification—of color, for example. What was the undeniable inference, the monstrous and abominable conclusion?

Mr. R. reminded his friend from Pennsylvania that the decision in the case of Mr. Spaulding turned not upon the invalidity of the act of Georgia. Her right to pass the law in question was never questioned; but it was in proof to the House that an act of God, the great hurricane, rendered it physically impossible to execute the law, and therefore it was dispensed with. It was an unforeseen interposition of Providence which nullified the law of Georgia in that case. Suppose an officer should intentionally keep back his returns, or should be waylaid on the road by the partisans of the unsuccessful candidate, and robbed of them, would that deprive the person really elected of his right to his seat? Certainly not. The gentleman from Vermont had quoted a part of the Constitution which had nothing to do with this subject—which, in fact, in that day, was nothing better than a dead letter. Would the gentleman from Vermont move for a bill to regulate the time, place, and manner of holding elections in the several States for members to that House? After all that could be said, practice, long-established practice, under the Constitution, was the best evidence what the Constitution was. Powers indisputably exercised by the States ever since its adoption, were as much departed from the General Government, and imparted to the States, as if especially delegated by the Constitution itself.

The Committee rose, and obtained leave to sit again.

FRIDAY, November 13.

MARYLAND CONTESTED ELECTION.

The House again resolved itself into a Committee of the Whole on the report of the Committee of Elections, to whom was referred the memorial of JOSHUA BARNEY, of the State of Maryland.

Mr. BIBB being about to offer an amendment, (but which was afterwards withdrawn, to make way for that offered by Mr. MONTGOMERY,) said he was too much indisposed at that time to enable him to enter fully into a discussion of the subject; but he thought it incumbent on him to state some of the reasons which induced him to move this amendment. Upon examination of the report of the committee, might be found these words: "The committee proceeded to examine 'the Constitution with relation to the case sub-'mitted to them, and find that the qualifications 'of members are therein determined without re-'serving any authority to the State Legislature 'to change, add to, or diminish those qualifica-'tions," &c. It was for the purpose of objecting to the report generally, that it might not become a precedent, that Mr. B. made any observations; but it appeared particularly strange to him that the committee should have inserted these words in the report, when it was known to the committee that there was in the Constitution a general reservation of all power not expressly delegated. The only question was, whether there be delegated to Congress a right to fix the qualifications of its members, or whether the States had not a right to alter or modify them. The words from which the inference in the report was drawn, were these: "No person shall be a Representative who shall not have attained to the age of twenty-five years," &c. These were certain qualifications which they had a right to require, and without which no person could be entitled to a seat in that House. The language was not such, according to legal construction, as to induce the House to say that the State authorities might not require other qualifications. If it had been thought by the framers of the Constitution that the States had no right to diminish or alter qualifications, they would have said that Congress should have the sole power of fixing them. As this, however, was not material to the question, as it now appeared before the House, he would make a few observations as to the grounds on which he thought it properly rested. From the report, it appeared that the law of 1790, which required a candidate to be an inhabitant, required a residence of twelve months previous to the election; but that which required one to be an inhabitant of the town and one of the county, did not say twelve months' residence, but simply provided that, at the time of the election, he should be resident there. It did appear that, five or six days previous to the election, Mr. McCreery did reside there; consequently Mr. McCreery was an inhabitant according to the law of Maryland, and entitled to be elected. It was always with Mr. B., and would be, as long as he had the honor to retain a seat in that House, a general principle, from which he would never depart except from the strongest conviction of its impropriety, that a member who was returned by a majority of votes of his constituents, should be entitled to his seat. Mr. B. could only vote otherwise, in a case where some bribery or corruption should be shown to have been used.

Mr. MONTGOMERY wished the gentleman to withdraw the amendment which he had proposed, in order that it might be substituted by the one he held in his hand to the same effect.

Mr. BIBB consented to withdraw it.

Mr. MONTGOMERY then offered the following as an amendment to the report:

"Whereas William McCreery was a resident of the city of Baltimore, in the year 1803; that he resided partly in Baltimore city and partly in the county of Baltimore, until the October election in 1804, when he was elected a Representative to Congress, in which capacity he served till March last, during which time he had a legal residence; and whereas it does not appear that he has since abandoned or forfeited that residence. Therefore

Resolved, That William McCreery is entitled to a seat in this House."

Mr. W. ALSTON said that, although he might be perfectly satisfied with the reasoning of the amendment just offered, yet he was opposed to its adoption at present, because he thought the

reasoning of the Committee of Elections much more proper. He would not question the correctness of the preamble just offered, but did not wish to vote for it, in consequence of the reasons which had been given in its favor. He saw no objection to voting for the resolution as reported by the committee, and every member must be satisfied that, in voting for the resolution, they did not adopt the reasoning contained in the report; for that was the reasoning of the committee, and not of the House. If the fact of Mr. McCreery's residence in the county, instead of the city of Baltimore, had been stated in the report, and also that the law of Maryland was Constitutional, he should yet have believed that he could have voted for the resolution, to the exclusion of every other part of the report, if he thought proper to do so, because the reasoning of a committee had no weight on his mind; the result was what he looked at. The committee had stated all the facts, and, in his opinion, had wisely avoided giving an opinion on the residence of Mr. McCreery. Every member was left at liberty to draw his own conclusions from the facts stated, without being biassed by the opinion of one of the standing committees of the House. They all knew what effect the opinion of a standing committee had upon the House.

Mr. A. said that he would, while up, offer a few reasons which had induced him to believe that no State had a right to add one single qualification to Representatives, or to diminish those laid down by the Constitution of the United States. Once permit the States to depart from the straight line, and where would they stop them? If they were permitted to go one step, were any bounds prescribed in the Constitution at which they could be stopped? That part of the Constitution which had been read by many gentlemen, and which described certain qualifications, upon possession of which a person might be entitled to a seat upon that floor, contained no such restriction. Several States in the Union had passed laws upon this subject; the State of which he had the honor to be in part a Representative, had divided the country into districts, and provided that every person returned should have resided in the district for which he was elected at least twelve months previous to the election. But, Mr. A. said, he had always believed that had the people of one district chosen to elect a man from another district, possessing other qualifications as required by the Constitution, he would be entitled to his seat. He had understood that the Legislature of Virginia had prescribed, among other qualifications, that no person should be elected a Representative unless he was possessed of a freehold estate. What might be the consequence of this? They might say that no man should be elected who did not possess fifty, one thousand, or ten thousand, acres of land. They might even prescribe the particular quality of the land, or its situation.

The case from Georgia, of Mead and Spaulding, had been so ably argued by the gentleman from Pennsylvania, (Mr. J. Clay,) that he would not dwell upon it; it was certainly a case in point. The Legislature of Georgia, in prescribing rules for conducting her elections, had said that the returns should be made within twenty days. How did the House act on this occasion, although there was a manifest violation of that law? The House, regardless of that law of Georgia, decided that the member elected should be entitled to his seat. This was a case stronger than the present, and in deciding on it the House had decided against the right of States even to regulate the manner of elections, which was more than he contended for.

The Constitution of the United States, when speaking of the qualifications of Electors of President and Vice President, varied in its language from that part which spoke of Representatives, because it says "each State *shall* appoint," &c. The Constitution, in speaking of Representatives, had neither said the States should assign qualifications, nor that they might; he, therefore, thought that any person possessed of qualifications, as required by the Constitution, and who was duly elected, was entitled to his seat, notwithstanding State regulations.

Mr. Rowan was opposed to the amendment, because it threw behind the screen the main question, on which the House ought to come to a decision. It was the first case in which a decision would be had, whether the State authorities could be blended with those of the General Government, or whether each should exercise its respective authority. He held it essential to the sovereignty of the Union that the National Legislature should, whenever the question came legitimately before them, decide upon the constitutionality of any law; without such an exercise of authority, the national sovereignty was prostrated, and must ultimately fall. It seemed to him essential to the wellbeing of the nation that the energies with which that sovereignty of the Union was vested, should be retained to itself, and should not be encroached on by the State authorities. As the whole to a part, so was the national existence to that of the State authorities; but while they preserved the national existence, they should be particularly careful of the attributes of the State authorities, one of which was now under consideration. Had the Legislature of Maryland exercised a power permitted them by the Constitution? If they had, should the sovereignty of the Union acquiesce in it? Should they acknowledge a principle which might hereafter assail it more vitally? No; for in this early period of the Government, a case has occurred upon which the right of each State can and ought to be determined as to the prerogative in question. The present is that case. A man had been elected, and had taken his seat in Congress from the State of Maryland; his election had been contested, because, said the applicants, the sitting member was not a resident of Baltimore, a part of the district from which he was elected. Had the Legislature of the State of Maryland the power of thus contracting the choice of the people? If they had the power of restricting the choice of Representatives as to place, why not as to other qualifications? They might say that no man was quali-

fied to serve as a Representative in the Congress of the United States who was not a farmer, a mechanic, or of any other profession. Grant them the power of adding qualifications, and where would they fix a limit? The Constitution did not provide against the introduction of a political test. The State Legislature might enact that no person should be a Representative who was not a Federalist; how would the committee reconcile this with that part of the Constitution which had undertaken to guaranty to the States a republican form of Government? If the Legislature determined that members from the State of Maryland should possess a certain property, that they should be worth £500 or £1,000, would it not be verging towards aristocracy? If they were to say that all the members of the State should be chosen from the town of Baltimore, would it not appear absurd? And yet they had as much right to do this as to say that each member should be a resident of a particular district. The Legislature was only authorized by the Constitution to say that they should reside in the State from which they were elected.

But, admitting that the right rested with the States, ought not qualifications always be settled by convention? Where was the use of the Constitution if the Legislature of a State could fix or vary qualifications? It seemed then that it was proper for the Convention of the United States to fix unalterably the proper qualifications. If they had not done this, it would have seemed to Mr. R. doubtful whether the power resided in Congress or the States. Was it proper that a part of the Union should have the sole and paramount power of fixing qualifications for members of the Union? In doing this, did they not legislate for other States? And if this were the case, should not Congress interfere? Mr. R. supposed that those gentlemen who advocated the right of State Legislatures to fix qualifications, would be shocked were Congress to assume that right; and yet Congress possessed every capacity from the people to legislate on this subject that the State of Maryland possessed. It would be somewhat better that they should, because they would be supposed to know the wishes of the Union better than so small a part of it as a State. He therefore contended that the qualifications for a Representative to Congress were unalterably fixed by the Convention; the Constitution was the place to look for them, and not the statute book, for if it were, they would float on popular caprice.

But to ascertain whether the Constitution did fix these qualifications or not, Mr. R. said he would request the attention of the Committee to a few arguments. It was a principle in law that everything which the parties who wrote, had said in a writing, was all they intended to say. If they had said nothing, it was presumed that they had reserved it for further consideration; but if they said anything on a subject, it was supposed they had said all they meant. Now the framers of the Constitution had prescribed certain qualifications; if they had intended that any other should be necessary, they would have said so. In the preceding clause they had given to the State sovereignties the right to fix the qualifications of electors: "The electors in each State shall have the qualifi-'cations requisite for the most numerous branch of 'the State Legislature." Here they have thrown upon the State Legislature the whole power to affix qualifications to the electors, as well of the members of Congress, as of the President and Vice President; not so as to the elected; it might have been unfortunate if they had; the different interests of the different States would have assigned different qualifications. In such circumstances, could any unanimity have been expected? No. It had therefore forcibly obtruded itself upon the people, that they should affix permanent qualifications, which were only that a member should have arrived to the age of twenty-one years, have been seven years a citizen of the United States, and should be an inhabitant of the State for which he should be chosen. No power had been given to the State sovereignties to superadd qualifications; if they had left this power with the States, this Government would not have been a Union, but a distraction. But if the Legislature may annex additional qualifications to the members of the House of Representatives, so they may also to the Senate. The members of the Senate were considered as particularly the Representatives of the States, the members of this House as Representatives of the people of the Union—distinct interests. And if the House decided that the State of Maryland did possess power to annex qualifications, they decided against the liberties of the people, for the members who composed the United States Convention were from the people, they performed the functions of Representatives of the people, and of Representatives of the State sovereignties. To the State sovereignties they granted additional rights, and others they reserved, among which last was the power of choosing the Representatives of the people, subject only to the qualifications of residence, &c. The State of Maryland had waived the qualifications thus fixed, and confined the residence of the member from that State to Baltimore, a particular part of his district.

Mr. R. said he was the more anxious on this question, because it appeared that other encroachments had been made on the Constitution. A gentleman from North Carolina had said that in his State the residence was confined to the respective districts from which they were elected. It was therefore high time the people should rectify these errors, or he agreed with the gentleman from Virginia, though from different causes, the Constitution would soon become a dead letter; he thought it, therefore, important to determine whether States were to the Union what counties were in relation to the States. He believed that, as to the purpose of electing members to the lower House of Congress, the States were to the Union what counties were to a State, and that districts in a State were to that State what elections precincts were to a county; all for the convenience of the electors, and not in abridgment of their rights. We should be shocked at a law requiring a county Represen-

tative to reside in a particular one of its several precincts; not less improper is it to require that the Representative in Congress from a State should reside in a particular part of any one district of the State. The people cannot be confined in their choice of a Representative within narrower limits than those of the State.

Mr. R. said the House ought to go on Constitutional grounds; and he held it, and was willing to express it as his opinion on the question, that persons voting for a member of Congress had a right to vote for a candidate residing out of their district as well as in it, and that, if a man out of a district had a majority of votes given in that district, he was duly elected a member of that House. Suppose the Legislature of Maryland, instead of determining that one Representative should be chosen from the city of Baltimore, had declared that all the Representatives of the State should be chosen from Baltimore. If she had power to confine one to a particular district, why not all? If they permitted the Legislature to contract the choice within a district, why not to a part of it? He was, therefore, impressed that, in advocating the doctrine he laid down, he was advocating the rights of the people; for it appeared that the rights of the electors and the elected, were invaded at the same time. On one side they had encroached on the liberties of the people to be chosen, and on the other side contracted the latitude of their choice.

Mr. R. said, that he believed it was one of the most prominent attributes of sovereignty to extend its power; that each sovereignty was, politically, though not physically, of equal power; that sovereignty, whether of the States or the Union, had an equal bias to self-extension. While they guarded against encroachments on State sovereignties, they must not let them encroach on the sovereignty of the Union. The rights of each consisted in the true observance, on the part of each, of the rights of the others. The State of Maryland had encroached on the rights of the people of the Union; for it was a particular right of the sovereignty of the Union to fix qualifications for Representatives to Congress, as they are fixed in the Constitution, which right the Legislature of Maryland had contravened.

He was struck yesterday by the force of an argument of the gentleman from Pennsylvania, who had cited the naturalization law in illustration of the present case. Would it be permitted to any State to enact laws regulating this matter after Congress had legislated upon the subject? He presumed not; for, if one State might, so might another, and they would not concur; hence a want of uniformity would result. Now, it seemed to Mr. R., that if a State could not legislate in the latter case, they could not in the former; they were subjects on which uniformity was at least equally important. On a uniformity of qualification for members of that House depended everything dear to the nation; it was a point on which the people of the Union ought to be most jealous, and the last on which they should be assailed. He should vote for the resolution of the Committee of Elections, but he wished the subject to be divided, that separate questions might be taken on each point. He was unwilling that there should be anything connected with the Constitutional point, that not a doubt might remain on its decision. The evils which had been represented yesterday as likely to result from this decision by the gentleman from Virginia, whose talents and motives he had always been in the habit of revering, Mr. R. thought, bore no proportion to evils which might result from a contrary decision. He had said that transient persons might be elected members of that House: the confidence in this particular was reposed with the people; they were to take care that a man who did not possess Constitutional qualifications should not be sent there; and if it were discovered by the House that one of its members was not constitutionally qualified, his seat would be vacated.

Mr. R. observed that the doctrine laid down by some gentlemen, that the electors and elected should possess similar qualifications, did not seem to him to be the sense of the Constitution, for it had annexed different qualifications. Perhaps it would be good policy in the States not to annex qualifications even to an elector, which did not attach to the elected. It seemed that the State of Virginia had enacted that no person should be entitled to vote who was not a freeholder; and it was argued that, therefore, no person could be elected who did not possess that qualification, which was contrary to the sense of the Constitution.

Mr. R. said he would therefore conclude, with expressing an opinion in favor of the resolution of the Committee on Elections; and that he was convinced of the right of the House to determine on the constitutionality of a State law, when it came legitimately before them, as in the present case. Whilst he relied on the State sovereignties, he also revered the National sovereignty, as one, without which, the State sovereignties could not be preserved; and by which, if the State sovereignties were assailed, they could alone be rescued.

Mr. Johnson said, it was with reluctance that he submitted to the consideration of the Committee a few remarks on this subject. It was not his wish, at this or any other time, to occupy the attention of the House unnecessarily. The importance and magnitude of the principles involved in this question might have been considered sufficient to have prevented a new member from rising at all; but the course which the argument had taken, and the form which the discussion had assumed, had alone induced him to express the reasons which would influence him to vote in favor of the report. It had been said that there was, on this occasion, a conflict between the State and Federal sovereignties: he considered the State sovereignties as the great palladium against anti-republican tendencies and encroachments on rights; and, while he retained a seat in that House, he would, in any conflicting case, give the power contended for to the States. But, on this occasion, the question was on the Federal Constitution, and whether any State Legislature, or

any other power of legislation, could add qualifications to any member of that House. He laid it down as a principle, that every contraction of qualifications for Representatives was an abridgment of the liberty of the citizen. The power of adding other qualifications than those fixed by the Constitution would, in his opinion, be a breach of the right of suffrage. If the principles contended for in the Constitution were not calculated to secure the liberties of the people, and a resolution to amend the Constitution were offered, he should be the first to sanction it. But when they contended for an abridgment of the liberties of the people, as by this amendment, he should oppose it. He was in favor of the report of the committee. One single reflection on this subject had influence on his mind. The observations of the gentleman from Virginia had almost made him doubt whether to give a positive vote on this principle; but he was not satisfied that any Legislature of the Union had a discretion under the Constitution to legislate on these important principles; he thought that discretion rested only with a convention of the people; he thought that any right to abridge qualifications was denied, both to the State Legislatures and to the legislation of the Union. Was it not a principle of Republican Government, that they should have well defined the qualifications of the electors and the elected? Should any power but the people themselves have a right to alter the qualifications required by the Constitution, and then in convention only? Would any power less than a convention of the State of Maryland assume the right of adding a disqualification?

The gentleman from Virginia had told them that the Constitutional disqualifications were negative. There were three: that no person should be eligible as a Representative who shall not have attained to the age of twenty-five years; who had not been a citizen of the United States seven years; and who was not an inhabitant of the State at the time of his election. This clause of the Constitution being negative, it had been said that the State Legislatures were not precluded from adding others: the reason for this negative expression was obvious. The people had a natural right to make any choice; and that would be an unlimited right, but for the Constitution. Every rational being would be eligible by the people, if no disqualification were annexed; and it seemed to Mr. J., if there actually existed no disqualification, the people would exercise their right of choice with much prudence: it would be consistent with their natural liberty. It therefore appeared unnecessary for the Constitution to have stated, affirmatively, who should be eligible, because all were so but those barred by the exception; an expression, then, of the negatives was all that could be necessary. There was a great distinction between the power of the people in convention, and the power of a Legislature growing out of a Constitution, which the people had entered into in their sovereign capacity. The great object of the people in convention was for the purpose of fixing upon primary and fundamental rules and regulations, to give form and organic structure to the society and body politic: among those primary principles, none had been considered more important than those which fixed the qualifications of electors and the elected. The term of service and tenure of office were principles which had never been left to the power of legislation, because they were the basis, the foundation, of our Republican institutions.

Mr. J. said, there were now in the Union seventeen States, and he would ask for a case in which these principles had been left in the power of any Legislature. They had, in all cases, been fixed by the people in convention. If, in this instance, disqualifications could be added, the same negative expressions ran through the Constitution, as respected all other elective officers, the President, Vice President, and Senators, and other disqualifications could, by the same rule, be extended to them.

One word on the subject of the State sovereignties and Federal Government. There were many subjects in which they had concurrent powers. In those cases, Mr. J. said, he would always decide in favor of the States.

Mr. RANDOLPH moved that the Committee should rise, in order to recommit the report to the Committee of Elections, to the end that the fact of residence might be ascertained.

Mr. TROUP most heartily gave his assent to the proposition. Ever since the report had been laid on the table, he had been seriously impressed with the solemn import of the question submitted to the House for decision; a decision which might yet be avoided if the facts were as stated by the gentleman from Maryland. He was averse to deciding it on Constitutional ground, although, were the question of necessity before them, he should not hesitate about it. He felt himself embarrassed when called on to decide on a right exercised by States, and he thought the House trod on delicate ground, when, by adopting this report, they proclaimed to the world their own omnipotence. They ought to avoid, if possible, a decision on the rights which had been exercised by States. For this reason he should hope the Committee would rise.

Mr. QUINCY did not understand the precise reason given by the gentleman from Virginia, for his motion that the Committee should rise. He believed the gentleman was not present before the House went into Committee of the Whole, when a motion was made to recommit, in order to obtain further information. It was then stated that all the facts, in the possession of the Committee, were before the House. If the gentleman had no other view than this, he should vote against the motion.

Mr. DESHA hoped the motion would prevail. The present was an all-important question, one on which he had not prepared himself to vote, and he wished to obtain time to deliberate on the subject.

Mr. LOVE said he had indulged a hope that a recommitment of the report of the committee might have taken place, from a supposition that

there were other facts attending the case, which, from the point on which the committee had decided, might, by them, have been deemed unimportant.

The great respect, said Mr. L., which I feel for the political characters and talents of the members of the Committee of Elections, has given this report a very imposing influence on my mind; yet, however painful it is to me to differ in opinion with that most respectable committee, on this occasion I conceive my duty makes it indispensable that I should express my dissent from the doctrines contained in their report.

In discussing the great Constitutional question I conceive to be involved in the report, I shall adopt the division which the subject seems naturally to require.

1st. Whether the right to legislate on the subject contemplated by the laws of Maryland, mentioned in this report, does not, of necessity, reside in some Legislative delegation; and, if so,

2dly. Where does it reside?

I shall contend for the affirmative of the first proposition. The great object of Government no doubt is to attain to that degree of political perfectibility, which, without invading the natural rights of men, shall be consistent with expediency and convenience. Is the power, then, contended for by Maryland, in the act of her Assembly, consistent with expediency, and no infraction of individual rights? If it is, I presume it is included in the common and usual powers of legislation, and must be found to exist either in our State or General Government. The confusion that would be attendant on the mode of election, and the total want of any local representation, are too obvious to need comment. The right to legislate at all upon this subject, I had not until to-day supposed would be questioned; and I confess, although now denied, I have heard no satisfactory reason offered in support of such an opinion.

Forming, then, as I presume, a proper object of legislation, I will next proceed to inquire where, according to the nature of our civil institutions, it must be presumed to reside.

If it resides in the General Government, it must be admitted that, according to the nature of that instrument, it must be found to be expressly delegated. An argument to prove this position, I should have presumed, at this time of day, unnecessary. If there are any here who doubt this position, I would, in the first place, refer them to all writers on the subject of our political institutions; for all who speak on the subject admit that the powers delegated to the Federal Government are to be taken strictly, and that nothing is considered as granted unless expressed to be so. I would next refer such gentlemen to the first section of the first article of the Constitution of the United States, which is in these words: "All Legislative powers herein granted shall be vested in a Congress," &c. And if a doubt yet remained that no powers were granted to the General Government, except those expressly enumerated, I would finally remind them of the provisions contained in the twelfth article of the amendments to the Constitution of the United States, and in the solemn, emphatic language of the gentleman from Pennsylvania, (Mr. Smilie,) invoke them to remember their oaths when about to decide this question.

But it has been argued, and such seem to be the principles on which the report is grounded, that the power to make laws on this subject is expressly vested in Congress; and in support of this proposition, different parts of that instrument are relied on. Let us examine those parts. The first mentioned in argument is in these words: [Here Mr. L. read the first and second paragraphs of the second section of the first article of the Constitution.] Here no grant of power is to be found. I never before understood that a restriction in any instrument, which is in its nature negative, could imply a positive conveyance of a right, or that more was withheld than the negative, or exception expressed; on the other hand, it is a maxim of construction, as it respects our Constitution, that no rights pass by implication.

Another part of the Constitution which has been argued on in support of the resolution, is the fourth section of the same article; and something has been inferred from the latter part of this section in favor of the power, because it would seem that only a concurrent right is granted the States of legislating on the time, place, and manner of holding the elections. This is not an exclusive one in Congress; and although I am not of opinion that any part of the Constitution may, by *non-user*, become obsolete, according to a rule of construction which applies to laws, yet, I think, on another ground, that the supposition is correct, that this power vested in Congress may be considered as a dead letter, because it never will be acted on; for, before a regulation can be made in pursuance of it, such regulation must be concurred in by the other branch of this Legislature, who are the immediate representatives of the States, in their political capacities, and who will, of course, guard their rights; and because, too, before such regulation would be carried into effect, it must receive, most probably, the Presidential approbation.

But it has been further argued that the right of enacting laws on the subject which the law of Maryland contemplates, is vested in Congress, under the fifth section of the first article of the Constitution; the words are, "Each House shall be the judge of the elections, returns, and qualifications of its own members." And it seems to be presumed that, because we are to be the judges of those qualifications, we have consequently, the right to constitute or enact the qualifications. The functions appear to me to be entirely distinct, as much so as the power of making the law is distinguished from the power of judging on it when made. One gentleman, indeed, the gentleman, I believe, from Connecticut, (Mr. Sturges,) has properly observed that we were acting, on this subject, in a judicial character, and in this opinion I concur.

We have been alarmed, from different quarters of the House, with the great dangers which would

result to the Government, from admitting that the State Legislatures should have the right of enlarging the qualifications prescribed in the Constitution for the elected; and some gentlemen have said that if the power exercised by the law of the State of Maryland is yielded to be in the States, they may superadd the age of thirty or forty to that of twenty-five, as fixed on by the Constitution; while others have deprecated the exercise of those powers by the States, lest they might require that the residence of the elected should be confined to a particular street or house, or that he should profess particular political opinions. To all this kind of argument, but one kind of answer need be offered; and that is, that we must rely on the discretion of the State sovereignties to exercise this, as well as all their other powers, under the control of a sound discretion. Nor can I for a moment suppose that those powers, necessary to the proper management of our political institutions, are confided with less safety, or subjected to a greater risk of abuse from the State, than from Congressional authority. I should, on the contrary, think that a power so necessary to be exercised, would be most safely confided, where the responsibility to the constituent was most sensibly felt. This is the case in a greater degree in the State governments, than under the Constitution of the United States. In the former, the elections are annual in all the States, I believe, while the elections to Congress are biennial. Much less risk is certainly to be apprehended from the acts of seventeen or more distinct sovereignties, each of which is composed of as many members as constitute the National Legislature, than from the conduct of a Congress, consisting of members from the distant and distinct parts of a widely extended empire, comparatively few in number, and whose peculiar interests might lead them to the adoption of measures inimical to the freedom of election. If the members of a State Assembly might be presumed to entertain designs of fixing their friends or themselves in office, by making an income of fifty thousand dollars per annum the qualification of a member, as the gentleman from Kentucky seemed to suppose, the danger would certainly be less, when the same power was confided to a body elected for the term this is. But why is so much to be apprehended from the exercise, by the States, of the power acted on by the Legislature of Maryland? Can we be afraid to trust the States with the exercise of this little power, with the most unreserved discretion, while they hold, under the express provisions of the Constitution, powers so much more important? Do gentlemen reflect that in the hands of the State governments, is the power to terminate, at will, the existence of one branch of this Legislature, and of another entire department of the Federal Government? Yes, sir, in the palms of their hands do the State sovereignties hold the being of the other branch of the National Legislature; and without their resuscitating breath, the Executive of the Federal Government must die, and be extinct forever. Good policy, as well as the happiness of us all, requires, that we should endeavor to harmonize with the States. Let us avoid all collisions of authority; they may disturb the peace of us all.

In the opinion I have formed on this subject, I feel great confidence, from the uniformity of construction which the State Legislatures have put on their powers. In perhaps every State in the Union, have laws been enacted of a similar nature to that which is now the subject of consideration. In Virginia, I acknowledge there is such a law as the gentleman from North Carolina (Mr. ALSTON) has mentioned. It certainly goes further in principle than the law of Maryland. Yet I think it a wise one in securing to the people the choice of Representatives, whose interests are, in some measure, assimilated to their own. Fourteen or fifteen other States, I believe, have, many years ago, and some of them of a date perhaps coeval with the operations of the General Government, passed laws of a similar nature with that under discussion. When we find so many distinct, enlightened bodies as the State Legislatures are, simultaneously acting in the same manner, on the same subject, without any previous concert, I confess it strongly supports me in the correctness of the opinion I have formed.

Mr. RHEA, of Tennessee, and Mr. J. CLAY, wished the Committee to rise, in order to a recommitment of the report to the Committee of Elections.

Mr. M. CLAY advocated the report, and opposed the recommitment. But if gentlemen wished the Committee to rise, to give them further time to display their talents, he had no objection, though he must say he was averse to these long arguments, and would rather have one good vote than fifty bad speeches.

Mr. BLACKLEDGE wished for a division of the question, so as to ascertain the sense of the House on both the contested points.

Mr. GARDENIER was opposed to deciding on the Constitutional question, as he thought it was not necessarily before the House. It did not interfere with his making up his mind, nor need it with others.

The Committee then rose, and obtained leave to sit again.

MONDAY, November 16.

Two other members, to wit; from Virginia, WILSON CAREY NICHOLAS; and from North Carolina, NATHANIEL MACON; appeared, produced their credentials, were qualified, and took their seats in the House.

Mr. HOLMES said he was instructed by the Committee of Claims to move, that they be discharged from the further consideration of several petitions on compensation for services during the Revolutionary war, and to move that they be referred to the committee appointed on the subject of claims barred by the statutes of limitation.—Agreed to.

Mr. J. CLAY observed that he understood many large purchases had been lately made by different agents for the United States, some of whom are

paid for their services a certain per centage on the amount of these purchases. He thought this the worst possible way of expending the public money. For the purpose of inquiry, and to bring the subject before the House, he moved the following resolutions, which were adopted:

Resolved, That the Secretary of War be directed to lay before this House an account or estimate of the purchases of merchandise and supplies made on behalf of the United States by the Superintendent of Indian Trade, by the Surveyor of Public Supplies, and by the military agents in the different districts, for the three years ending the 30th day of September last, specifying, as far may be practicable, the amount purchased, for what departments, at what place, and by what officer, together with the emoluments, commissions, or salary allowed to such officer.

Resolved, That the Secretary of the Navy be directed to lay before this House an account or estimate of the purchases of merchandise and supplies made on behalf of the United States by the navy agents in the different ports of the United States, for the three years ending on the 30th day of September last, specifying, as far as may be practicable, the amount purchased in each year, at what port and by what agent, together with the emoluments, commissions or salary allowed to such agent.

Mr. Poindexter, after a few preliminary observations, exposing various defects in the organization of the courts of the Mississippi Territory, moved the following resolution, which was adopted; and a committee appointed accordingly, consisting of Mr. Elliot, Mr. Van Allen, Mr. Key, Mr. Howard, and Mr. Poindexter.

Resolved, That a committee be appointed to inquire whether any, and, if any, what alterations are necessary in the act, entitled "An act for the appointment of an additional judge for the Mississippi Territory, and for other purposes," and also in the act, entitled "An act to allow jurisdiction in certain cases to the Territorial courts," and that they report thereon by bill or otherwise.

Mr. Barker moved the following resolution, which was negatived, 50 to 47:

Resolved, That the Committee of Commerce and Manufactures be instructed to inquire into the expediency of granting a bounty on all salt which shall be manufactured in the United States, and report by bill or otherwise.

Mr. M. Clay moved the following resolution, which was adopted, and a committee appointed, consisting of Mr. M. Clay, Mr. Thomas, Mr. Butler, Mr. Dana, Mr. Chandler, Mr. Helms, and Mr. Desha:

Resolved, That a committee be appointed to inquire whether any, and, if any, what alterations are necessary to be made in the militia laws, and that they report by bill or otherwise.

Mr. Dana said he had a resolution prepared for the purpose of calling the attention of a committee of this House to a subject materially interesting to the sovereignty of the nation; the committee he wished to instruct was that on aggressions committed on our waters, &c., but as he did not see the chairman of that committee in the House, he should lay it on the table and call it up when that gentleman was present.

The resolution laid on the table was as follows:

Resolved, That the committee to whom was referred so much of the Message of the President of the United States as relates to aggressions within our ports and waters, to violations of our jurisdiction, and to measures necessary for the protection of our ports and harbors, be instructed to inquire into the expediency of providing for the employment of adequate force to compel the immediate departure of such foreign armed vessels as may be found remaining within the waters of the United States in defiance of any interdictory Proclamation duly issued by the President of the United States; and that the committee have leave to report by bill, or otherwise.

MARYLAND CONTESTED ELECTION.

The House again resolved itself into a Committee of the Whole on the report of the Committee of Elections, to whom was referred the memorial of Joshua Barney, of the State of Maryland, stating his claim to a seat in this House, as one of the Representatives for the said State.

Mr. Bibb said, that when he had spoken on this report on a former occasion, he was too much embarrassed by his ill health to go fully into the subject. It appeared to him to embrace two distinct questions. He was himself in favor of rejecting the report, and yet agreeing with the resolution which it recommended. In order to overcome the difficulty in which he found himself, he had proposed a resolution, which he had withdrawn in order to make way for that proposed by the gentleman from Maryland, (Mr. Montgomery,) which was also afterwards withdrawn. To effect his wishes, he now offered the following resolution:

"*Resolved*, That William McCreery is duly elected, agreeably to the laws of Maryland, and is entitled to his seat in this House."

Mr. B. said that it appeared there was a majority of the House in favor of the election of Mr. McCreery, but that there was a difference of opinion as to the reasons which should influence that decision. To avoid this inconvenience, it had been suggested by the gentleman from New York, (Mr. Gardenier,) that it would be better to take the question on the fact of his election only, unconnected with the report of the Committee of Elections. If there were any other mode of getting over this difficulty, Mr. B. would not have proposed this resolution. The report now before them declared Mr. McCreery entitled to his seat, and assigned certain reasons for it. It had been said by a gentleman, whose opinions he highly respected, that they were now about to decide on the resolution, and not on the report. If Mr. B. could have believed this, he should not have wished the report to be amended; but it appeared to him, that if ever hereafter a similar case should occur, by resorting to the public journals, it would be found that this decision had been made on the report of the Committee of Elections, who had given certain reasons for their opinion, and these reasons would certainly be considered as adopted by the House. He could see no escape from the difficulty, but by such a resolution as that which he had proposed; for, if a decision were taken on that, and

a majority were in favor of the sitting member, there would be an end to the business.

Mr. B. said, as he had offered this resolution, and stated the grounds on which it was founded, he would state some of the reasons which had operated on his mind in its favor. A law had been passed by the Legislature of Maryland, some years ago, which directed that a Representative from the State should have been a resident of the district from which he was elected, and should have been so twelve months previous to the election. By another act passed since, the district of Baltimore was entitled to two Representatives—one from the town, and one from the country. By this law, no term of residence was prescribed; it merely directed that the Representative from the town should be a resident. The law not declaring the length of time necessary to a residence, the House were at liberty to put the same construction on the law as had been assumed by the inhabitants of the town of Baltimore. It appeared that Mr. McCreery had resided sometimes in the country, and sometimes in the city. His intention was to reside there during the Winter, but he was called away by public business. And, though it did not appear that Mr. McCreery did reside in the city during the Winter months, it appeared that he would have done so, but that his absence at Washington on public business prevented him. He was, therefore, to be considered as fully and completely a resident as if he had actually resided there during the Winter. Mr. B. recollected that, on this subject a decision had taken place in the State which he had the honor to represent. A plea was offered against the due election of the Governor, on the ground of non-residence. His situation was similar to that of Mr. McCreery. His plea of residence was sustained, and it was decided that he was a resident of the city of Savannah.

In the construction of laws, Mr. B. said, it was a sound principle, that whenever the reason of the law was satisfied, the law itself was satisfied. Who were the people interested in the decision of this question? The people of Baltimore themselves. What view had the Legislature of Maryland when they passed this law? They had presumed that there might be a collision of interests between the city and the county—between the commercial and agricultural interests—and thought correctly that they should both be represented. Therefore, had the law been passed which directed that one should be chosen from the city, and one from the county. For several years, Mr. McCreery had been a Representative from the city of Baltimore. At the last election he had received a large majority, not from the county only, but from the city of Baltimore. Now, if the people who were interested in the election, had, by their suffrages, determined that Mr. McCreery was a resident of the city of Baltimore, and were willing that he should be their Representative, why was any question necessary, even as to his residence?

Mr. B. concluded with saying that this decision of the people would be, with him, a sufficient inducement to vote in favor of the sitting member.

Mr. RHEA, of Tennessee, suggested to the gentleman from Georgia the propriety of withdrawing his amendment, in order to allow Mr. R. to make a motion for striking out of the report of the Committee of Elections the word *therefore*, preceding the resolution which terminated the report, and which would completely separate the resolution from the report. An amendment of this kind, Mr. R. thought, would remove all difficulty.

Mr. QUINCY would submit to the Committee a few observations on the great question now under consideration. He had heard the observations of the honorable chairman of the Committee of Elections, (Mr. FINDLEY,) and the arguments of a member of the committee, (Mr. STURGES,) in favor of the report, and he confessed he was perfectly satisfied with the reasoning of the report, and with the justice of the decision which it recommended. But his mind, as well as that of every member in the House, was turned very forcibly to the subject by the solemn appeal made to them by the gentleman from Virginia, who had placed the subject in so strong a point of view, that it had determined him (Mr. Q.) to look into the Constitution, and consider it well before he gave his vote on the question. He had done so, and it had only more fully satisfied him of the justice of the report. He should not submit to the House the reasons which had actuated him in this decision, had they been anticipated by any gentleman who had yet spoken on the subject.

In order to the investigation of this report, it would be necessary for him first to make one or two remarks in reply to observations made by the gentlemen from Virginia on his right and left, (Mr. LOVE and Mr. RANDOLPH.) The gentleman on his left, who first spoke on the question, had said that, in declaring a law of a State unconstitutional, they were proceeding on dangerous ground, and had objected to a decision on the law of Maryland from that consideration. Mr. Q. said, if they even thought with that gentleman, they were compelled to decide the question. But there was a way of amending the Constitution of the United States; and if the people did not approve the decision which the House might make, the remedy was in their own hands. The question therefore of danger was not a consideration to deter the House from the exercise of its duty; they were to look into the Constitutional right, and pursue the path of their duty, without suffering themselves to be influenced by any other consideration. There was another observation of the gentleman from Virginia, which he should not have noticed at all, if it had not been thrown out so conspicuously; it was to this effect: that a respect for the State laws was a criterion of the American character. This observation, Mr. Q. said, confined within its proper sphere, was undeniably correct: but so was respect for personal and national rights a criterion of American character. He did not mean to apply this observation to the gentleman from Virginia, because his expression had not authorized it; but if it were meant by the gentleman, that the national rights should yield to the State rights, he could not reconcile the doctrine with his sense of duty. Powers were given to Congress by the peo-

ple, to be exercised agreeably to the provisions laid down in the Constitution. It was their duty to examine what those powers were, and when ascertained, to exercise them in all cases on subjects which came properly before them. He thought the General Government should yield no further to States than it would to individuals. He respected the State authorities within their natural and Constitutional bounds, moving within the orbits which had been assigned them. If they transcended these orbits, they should meet with no respect from him. The Constitution contemplated, and indeed made it a duty, that they should examine into these things.

There was an error in point of fact, which it appeared to Mr. Q. had crept into the arguments of gentlemen who supported the constitutionality of this law, viz: that the Constitution was a confederation of the States. The gentleman from Virginia, who had so forcibly drawn his attention to the subject, had quoted the Constitution in support of this argument. There was an important article in the Constitution which the gentleman had no doubt not intentionally omitted, that "The powers not delegated to the United States 'by the Constitution, nor prohibited by it to the 'States, are reserved to the States respectively, 'or to the people." It was a delegation of powers in the Constitution, not merely to the States, but to the people, who constituted those States. The language of the Constitution was not *we the States*, but *we the people* of those States. Their power was derived from the people; they were responsible for the exercise of that power to the people, and not to the States. The authority of Congress was as broad as that of the States, within the limits prescribed by the Constitution, and as dear to the people. The only question in all these cases was, whether the powers they exercised were agreeably to the Constitution. The people were the basis of their power, and this House derived its authority from them, and not from the States. The people had not allowed them to receive their powers from the States; they meant that Congress should receive their powers from the people alone; and the people had said to them, "Exercise these powers," without allowing them to make any barter or sacrifice of them, or to yield them to the States.

Much had been said, and a loud warning given to the House, not to adopt powers by mere construction. Mr. Q. was happy, that in this case, they were assuming no powers not expressly delegated to them; and this brought him to the arguments which he would offer on the provisions of the Constitution.

Mr. Q. said that he laid it down as correct, that there was a great distinction between *powers granted* and *rights reserved* to the people. In the first clause of the fourth section of the first article of the Constitution, it was provided that "the 'times, places, and manner of holding elections 'for Senators and Representatives shall be pre-'scribed in each State by the Legislature thereof; 'but the Congress may, at any time, by law, make 'or alter such regulations, except as to the place 'of choosing Senators." Here was a power granted, and to whom? To the States. It was a qualified power which the people had granted; for in case Congress chose to exercise this power, the States could not exercise it; but till that time the States were at liberty to exercise it. What was the power? The power of prescribing times, places, and manner. Did the case at present under consideration come within either of these? No construction of the Constitution would warrant the supposition that it was included in either. It must be remembered, that if the power of fixing qualifications be not given in this clause, it was given nowhere; there was no delegation of it to the people, or to the States. Another part of the Constitution says; "each House shall be the judge of the elections, returns, and qualifications of its own members," &c. Here then it appeared that the power of judging of the qualifications of its own members was given to that House, and not to any State. The time, place, and manner, they *might* direct; but the power of determining on Constitutional qualifications belonged *exclusively* to that House. As to rights reserved, now came in the tenth amendment to the Constitution, cited by the gentleman from Virginia on his right, which speaks of rights reserved to the States, or to the people. What rights? When the whole right of voting was the subject of consideration, as it was at the formation of the Constitution, the exclusion of a part was the inclusion of the remainder. The Constitution had said that certain persons should not have a right to be elected members of this House: was not this a declaration that all others might? This was a right then which was reserved to the people, and not to the States. Gentlemen might show the wisdom of giving it to the States, but not the necessity, except they could show some objection to the people's exercising that power.

He would not, upon this occasion, enter into any inquiry on the question of expediency, because, according to his view and clear conception of the Constitution, he could not consider an attempt made by a Legislature of any State to annex qualifications, in any other light than as a direct violation of the rights reserved to the people. All question on expediency was therefore at an end, although the arguments which had been drawn from the consideration of expediency were very strong; for if the States could annex one qualification, they could annex another, and they would make one class of men alone eligible, and destroy the fundamental principles of our Government.

The gentleman from Virginia had, the other day, introduced a doctrine intended to excite the apprehensions of the members of the House. He had said that, by the laws of some States, persons of color would have a right to enjoy the privilege of a seat on that floor. Would it be said, from this reason, that the States had a right to affix qualifications? The case was so extremely absurd that Mr. Q. would not have noticed it, but from an effect which this power in the State might produce, and one much more likely to happen than that which the gentlemen had supposed, considering the prejudices of the Southern States. Sup-

pose that one of the Northern States should say that *none but* a black man or a man of color should be elected. He did not expect it ever would be the case, but merely placed the question in a strong point of view, to show that the power contended for by the gentleman might have fully as dangerous an operation as the denial of that power.

The other gentleman from Virginia (Mr. LOVE) had asked if they could not trust the States. Certainly they could. But if the authority now exercised by some of the States did not belong to them, they neglected their duty if they did not put a stop to it. The doctrine which the gentleman had urged, did not flow from the conclusions of the case which he had cited. The power of dividing the State into districts for the election of Representatives, was within the authority of the States; but when they said they should be residents in those districts, they exceeded their Constitutional authority. Such a law, so far as it could operate on the people, was no more than a recommendation to them, from the sovereignty of a State, that they should choose a Representative resident within their own particular district. But if the people choose to elect an individual in every other respect qualified, out of any other part of the State, in making that choice they would exercise no more than their right.

Mr. Q. would, in conclusion, merely recapitulate his arguments. 1. He contended that the right to be elected, was a right of the people, which they had reserved to themselves, except as limited by the Constitution. 2. That they had not given to Congress the power to increase the number of qualifications, because it came within neither time, place, nor manner. 3. That if the House should determine that the States had a power to annex these additional qualifications, they would sanction in the States an exercise of authority which could not be justified by the Constitution of the United States.

Mr. KEY.—Mr. Chairman, if the Committee will have the goodness to indulge me, I will assign the reasons which induce me to hope the present amendment may be rejected. I am in some measure called upon by the observations of an honorable member who has taken part in this debate, and who has endeavored to alarm our fears for the safety of the State sovereignties, in case the law of Maryland should be declared unconstitutional. If the Legislature of Maryland has, in the instance before us, transcended its authority, however delicate the ground we tread on, our duty must be performed. We are to decide on the Constitutional qualifications of a member returned duly elected, and on this subject our powers are judicial, not legislative. Under the Constitution, we are expressly made judges of the qualifications of the members. We are sworn to support that Constitution, and must discharge that duty with integrity and uprightness.

One objection to the amendment is, that it covertly causes us to decide on the very point which it openly professes to avoid. Whoever votes in favor of the proposed amendment, does recognise the constitutionality of the State law; and hereafter it will be cited as a precedent in support of State authority; and, if such be the opinion of the Committee, let it be openly and fairly avowed.

It has been said by an honorable gentleman from Virginia, that if there was an unerring criterion by which to judge of a person's political sentiments, it was his adherence to the State sovereignties; and so far I agree with him; but permit me to go one step further, and say that it is equally an unerring criterion to judge of a person's political correctness, to ascertain his attachment to the Constitution of the United States; for it is in vain to profess an attachment to one, at the expense of the other; both, as the basis of political security, must be equally respected. The State and General Governments must respectively move in their proper orbits, constitutionally assigned them; like a well constructed piece of mechanism, all will move harmoniously whilst each part performs what is assigned it. Should, however, the State governments usurp authority over the qualifications of Representatives, we must not shrink from our duty, but judicially declare the usurpation, and pronounce the act void.

The question is not fairly presented to the House. It is not whether Mr. McCreery or Mr. Barney is entitled to a seat in this House. That is a minor consideration, wholly absorbed. The real question is this: "Shall a portion of the people of the United States, claiming their Representative under the Constitution of the United States, be restricted in their choice by a State law? Can a State abridge the elective franchise, by superinducing other qualifications in the elected than those required by the Constitution of the United States?" I have before stated, and I now repeat, that I will not vote on this subject, because I may be supposed to have an interest in the decision, as it involves principles to be decided in my own case; but though I shall not vote, I hold myself free to assign my reasons, and thereby endeavor to protect in my constituents those privileges which the State has endeavored to take from them. To whoever will attentively consider, and compare the different passages in the instrument in my hands, (the Constitution of the United States,) there can exist no doubt but that all legislation is closed as to the qualifications of the elected or Representative; being a Constitutional provision, neither Congress nor the State Legislatures can interfere.

By the second section of the first article, it is declared, "The House of Representatives shall 'consist of members chosen every second year by 'the people of the United States, and the electors 'in each State shall have the qualifications requisite for electors of the most numerous branch of 'the State Legislature." This is all that respects voters. Let it be remembered that the Convention who formed the Constitution of the United States, had met to form a National Government, and that the right of suffrage presented itself clothed with great difficulties, no two States having precisely the same qualifications. In the State of Virginia, a freehold qualification was

necessary to entitle a citizen to vote. In some States a certain amount of personal property was necessary; in others universal suffrage prevailed; in some was combined, with the elective franchise, a longer or shorter period of previous residence, of age; and one permitted a certain class of females to vote. From this view of the elective franchise, may at once be perceived the difficulties under which the Convention acted, and the almost impossibility of a uniform qualification: for, had the Convention adopted, as a uniform rule, the qualifications prescribed in any one State, it would have violated the habits and practice of almost every other State. To avoid this difficulty in a Government founded on compromise, and to go into operation on the subsequent adoption and approbation of the citizens, a most happy expedient was devised, which was, to give to the electors in each State for Representatives to Congress, the same qualifications that were requisite for the most numerous branch of the State Legislatures. This could not fail to be acceptable to each State, because it adopted the usage of each State. Our patriot Convention conformed, as far as was practicable, to the wishes of ths several States, and this spirit of compromise pervading the Constitution of the United States was the pledge of its adoption.

The second paragraph of the second section of the first article of the Constitution of the United States is in these words: "No person shall be a 'Representative who shall not have attained the 'age of twenty-five years, been seven years a citi-'zen of the United States, and who shall not, when 'elected, be an inhabitant of that State in which 'he shall be chosen." Before we examine this article, let us see by whom, and for whom it was framed.

The Convention who formed the Constitution of the United States, represented not the States, but the people of the United States. They met to form not a State government, but a National Government for the people of the United States. The sovereignty of each State was solemnly guarantied by the Constitution, and as each State, whether great or small, was equally sovereign and independent, each State is equally represented in the Senate of the United States; each State sends two members; and this is the federative feature in our Constitution; but the House of Representatives was intended as the immediate representation of the people of the United States. The Constitution begins: "We, the people of the United States;" and the Constiution having defined the qualifications of the electors, it proceeds to define those of the Representative, or elected. It was surely competent to the Convention, who represented the people of the United States, to say what qualifications their agent, Representative, or law-maker, should possess, and they accordingly fix three: 1st, That he shall be above the age of twenty-five. 2d. Seven years a citizen of the United States. And, 3d, An inhabitant, when elected, of the State in which he shall be chosen. Uniformity could not, I have shown, be obtained as to the qualification of the electors; but it was most desirable in the elected, and, as it could be easily obtained, is accordingly specified in the Constitution; and the expression of these qualifications in the Constitution, is the exclusion of all others; so, to define the qualifications of the elected, was within the power of the Convention, was their duty, and is set forth in the Constitution itself.

But it is objected that the expressions used in the Constitution are negative ones, and do not prevent the States from superadding other qualifications. To this I answer, first, that if the words are changed into positive instead of negative terms, it makes no difference in the meaning; for instance, each Representative shall be above the age of twenty-five, &c., creates no difference in the construction or meaning of the article. You may make a new article to remove the difficulty, but the present one cannot be altered in signification, whether the terms remain negative, or are changed to affirmative ones. I will hereafter consider the effect of these words, when used to describe the qualifications of President.

Secondly. As to the power of the States to superinduce other qualifications to the three enumerated in the Constitution of the United States, I say, and I lay it down as a political truth, that the States, in their sovereign capacities, have no power, right or authority to interfere with the elections of Representatives to Congress, except so far as the Constitution of the United States gives them special powers so to do. By what authority do the several States interfere in elections of Representatives to Congress? Let each man honestly put this question to himself. Is it under the principles of State sovereignty? No. By what authority, then? I answer, by the express authority of the Constitution of the United States, in these words; first paragraph of fourth section of article first: "The times, places, 'and manner of holding elections for Senators 'and Representatives shall be prescribed in each 'State by the Legislature thereof; but Congress 'may, at any time, by law, make or alter such 'regulations, except as to the places of choosing 'Senators." Every man acquainted with our political institutions must say that the State Legislatures derive their authority from the above article, to interfere with the United States elections. It was impracticable for the Convention to introduce an election law into the Constitution; they, therefore, left certain powers with the States. What are those powers? To regulate the time, place, and manner of holding elections. It is a special, limited power, for particular designated objects. The first branch of the power gives authority to the State Legislatures to regulate the time of holding the election; surely the time of holding the election has no relation to the previous residence or qualification of the candidate. Secondly. The State Legislatures may regulate the place of holding elections; manifestly this power has no reference to the qualification of the candidate. And thirdly: The State Legislatures may regulate the manner of holding elections. Now the manner of holding an election has no

connexion with the previous residence or qualification of a candidate; but it implies that the election may be *viva voce*, by ballot, by districts for the convenience of the voters, or by the States in a general ticket. When the Constitution designates three qualifications, and no more, and when that same Constitution gives to the States the limited power to prescribe the time, place, and manner of holding elections, can any reasonable man believe that the States have power to add qualifications of age, property, or residence? If the States have power to add one qualification, they have power to create all. If they can make one year's previous residence in a district necessary, they have equal power to make forty necessary; and if they can limit the residence (as in this case of McCreery) to a particular part of the district, they may to a particular house in the district, and so localize a man as to take all power of election from the people; totally destroy the elective franchise. They may say, with equal power, that no man under £1,000 a year shall be a Representative. Mr. Chairman, the people of every State in the Union have a direct interest in every member of the House of Representatives; these members do not represent, in this House, the people of any particular State, but the people of the United States generally, and are competent to raise taxes from the whole people of the United States, though all the Representatives of any one State should oppose the law, and to bind all the people in every State by their votes and acts: hence the people in each State are interested in the qualifications of the Representatives of every State, and no one State can destroy the right. It was from this great principle that every Representative, from whatever State he comes, may, by his acts and votes, bind the citizens of other States, declare war, or lay taxes, that the Constitution defined the qualifications of the elected; limited the power of the States simply to the time place, and manner of holding the elections; and declared, in terms too plain to be perverted, "We the people" of the United States have declared who may elect, and who be elected, and we leave to the States (until Congress shall otherwise direct) the power to prescribe the time, place, and manner of letting such qualified electors choose such qualified Representatives.

It has been said, but faintly relied on, that if the States have power to fix election districts for the electors, they may equally locate the Representative. But this is a great mistake. The Constitution, in permitting the States to determine the manner of holding elections, permits them, if it suits their convenience, to hold them in districts; but the attempt to curtail and rob the people of their elective franchise, by making the eligibility of the candidate depend on the locality of his residence, is out of their power, and not given to them by the Constitution. As to the propriety and policy of such power being placed in a State, it is not now a question. We are not framing a constitution. We are examining where it is placed by our Constitution. If it is not well placed, there is a Constitutional mode of altering it.

But gentlemen say that the States, for twenty years past, have added qualifications of residence to Representatives. To this I answer, that if the Represenative is a resident of the district, he must, *ex necessitate*, be of the State and of course have the Constitutional qualification. But I perceive great danger in this doctrine. Violations of the Constitution, by some of the States, are now cited as precedents from which destructive conclusions are drawn, although the cases cited have never been acted on. Thus the assumption of power by the Legislatures of some States, is made to justify itself. If these innovations, thus practised, and never brought judicially into view of this House, are permitted to go on, they will, in time, like water dropping on a stone, wear away the very substance of the Constitution.

Now is the time to act on the subject. It is fairly before us on the report of the committee; and in what capacity do we act? In our judicial capacity, as judges, under these words in the first article of the fifth section: "Each House shall be 'the judge of the elections, returns, and qualifica-'tions of its own members." We have no discretion as a legislative body. We cannot look into the policy or propriety of the qualifications. We are sworn to support the Constitution. We sit as judges under it, and it is our bounden duty to declare if the State of Maryland has violated the United States Constitution, by imposing on a Representative other qualifications than that instrument requires.

It is a sound rule, in construing instruments, to examine the different parts of them, and if the same words are used on a similar subject, they must have the same interpretation. I pass by the Senatorial qualifications, where the same negative expressions are used. I will proceed to the qualifications of the President of the United States, article 2, section 1, paragraph 5: "No person, ex-'cept a natural born citizen, or a citizen of the 'United States at the adoption of this Constitution, 'shall be eligible to the office of President; nei-'ther shall any person be eligible to that office who 'shall not have attained to the age of thirty-five 'years, and been fourteen years a resident within 'the United States." The expressions used in this article are in negative terms, in the same manner as those used with respect to qualifications of the Representatives; and does any reasonable man, and does any friend of the Constitution, say that the States can superinduce or add any other qualification to the President than those designated by the Constitution? If negative expressions apply to one case, so they do to the other. If the doctrine of reserved powers applies to one case, so it does to the other. What would be the absurd consequence of investing the State sovereignties with power to add other qualifications to the President? The nine small States might add qualifications of age, residence, or property, and the eight large States, from their numbers, might elect a President without any of the qualifications limited by the majority of the States. What a singular phenomenon this would produce! A President elected by a large majority of the elec-

tors without the qualifications prescribed by a majority of the States? An argument producing such absurdities need not be pressed further. It is impossible to let the States interfere with the qualifications of the Representatives, and yet restrain them from interfering with the qualifications of the President. Very nearly the same expressions are used in each case in the same instrument, defining the qualifications.

A distinction is attempted which cannot be maintained, viz: "that the President is elected for the United States, and that no State can alter the qualifications in which all have an interest." I admit it; and this argument is most strongly in my favor, for all the citizens of the United States have an interest in each Representative, and therefore no State can alter the qualifications of a Representative; each Representative may, by his single voice, declare war or lay taxes. He who can command the sword and the purse of the people must represent them; and consequently each member must represent the people of the United States, not the people of his State; for to say that a person can, by his voice, lay taxes on persons whom he does not represent, or make them go to war, is a principle hostile to republicanism, and tears up the foundation of our Government.

It is said the States ought to have power to add qualifications of residence, or the people may choose transient persons; but this argument proves too much, because, when pushed far, it proves the people not competent to self-government.

I derive some consolation from the circumstance that I am a young member, of little or no political influence; hence, my arguments have nothing to recommend them but their intrinsic weight, and, in a Constitutional question, this is most desirable. We should be on our guard against the high character and influence of the gentleman from Virginia, whose opinions, from his talents and standing in society, may be received as correct, without accurately investigating them. But, is my doctrine new, Mr. Chairman? No, sir; it is a doctrine coeval with the Constitution, and supported by our ablest men. In a work of high celebrity, *The Federalist*, composed by Jay, Hamilton, and Madison, men eminently distinguished for their patriotism and their talents, and who, with dignified reputation, have filled the highest offices in our country, this doctrine is explicitly stated and ably maintained. The same doctrine is supported in the debates in the Virginia Convention, where some illustrious characters exhibited their acknowledged talents. There, sir, an objection was taken, that there was no freehold qualification in the Representative, the darling object of Virginia. Those who made this objection, never supposed the qualifications were not fixed by the Constitution; for, men of such talents and reputation would never have urged that as an objection to the Constitution if, for a moment, they had supposed the Legislatures of the States competent to make such alteration.

I have yet, sir, another high authority. A learned commentator on Blackstone, every way distinguished for his worth and his learning, has, on this very subject, suggested doubts "if State 'qualifications, that is, a freehold required by 'the Virginia laws, were not rendered void by 'the Constitution of the United States." [See *Judge Tucker's Commentaries.*] The Judge's doubts are suggested only, but this was all he could do, for delicacy and propriety would not permit him to give an absolute opinion on a subject which might come judicially before him. Fortified with these opinions, and justified by the Constitution itself, I fear no hazard in the assertion "that the States are not competent to 'divest the people of their elective franchise, se-'cured by the Constitution, and that such an at-'tempt is an usurpation of power on the part of 'the States."

To guard the elective franchise sacredly, is the first of Republican duties—it is the shield with which the people protect themselves—and this franchise is equally endangered, whether the law imposes a qualification on the electors or the elected. If only freeholders can vote, the number of votes is diminished; if only freeholders can be elected, then the number out of whom the choice is to be made is lessened. Suppose £500 a year required in an elector, none but the rich could vote; suppose £500 a year required in the elected, then none but the wealthy could be chosen, and the power of prescribing such a qualification makes the people victims. Fortunately the Constitution of the United States requires no property qualification in the elected, but leaves the door open to merit of every description. One argument, Mr. Chairman, remains to be considered, greatly relied on, but which will not stand the test of rigid examination. Gentlemen say that the Constitution only requires three qualifications in the Representative, and that the States have authority to superinduce others, under the tenth amendment to the Constitution, which is in these words: "The powers not delegated to the United 'States by the Constitution, nor prohibited by it 'to the States, are reserved to the States respect-'ively, or to the people." I ought here to state, that I do not consider the qualifications of Representatives as at all coming within the meaning of powers granted by the Constitution, but rather as the means by which the powers granted are to be carried into effect, as an incident to the organization of the House of Representatives; yet I will not detain the Committee on this subject, but leave their good sense to examine it, and proceed to answer the argument. "Powers not delegated 'to the United States, nor prohibited to the States, 'are reserved to the States respectively, or to the 'people."

I consider the States and the people, as expressed in this article, not to be synonymous terms, but used to contradistinguish one from the other. I beg the Committee to retain one clear distinction in their minds, that the Government of the United States represents the States in their sovereign capacities in the Senate, and that the people of the United States are represented in the House of Representatives. With this distinction kept in view, a lucid exposition of the article of

reserved powers will at once appear: the powers reserved are reserved to the sources from which they came. Before the adoption of the Constitution of the United States, the several States were independent sovereignties; as such, each had the right to levy war, make treaties, coin money, &c.: these portions of the sovereignty of each State have, for the general safety of the Union, been delegated exclusively to the United States, but other sovereign powers, such as legislation, &c., have been retained by each of the States. The meaning of this article then is, that all sovereign powers, not delegated to the United States, nor prohibited to the States respectively, remain to the States in their sovereign capacity; so in like manner all powers vested in the people of the United States, which are not delegated to Congress, nor prohibited to the people, belong to the people as the fountain of power in a republican Government. Now the qualifications of a Representative to Congress never could emanate from the States in their sovereign capacities, because such power or appointment was unknown to the States in those capacities, and never did exist with them, of course could not be reserved to them; but the qualifications of a Representative to Congress did flow from the people of the United States, who created the appointment for their own protection and government, and any power to alter those qualifications, not given by the Constitution to the United States, nor prohibited to the people, is reserved to the people, and not to the States.

To form a correct idea of this subject, and of the true meaning of the article of reserved powers, it is only necessary to trace with precision in what body the power was originally lodged; to that body it is reserved. If it was lodged in the States as sovereignties, then the reservation is to the States in that capacity; but if it was a power in the people, and such as the States in their sovereign capacity never had exercised or could exercise, (as in the present case,) then it was reserved to the people, to be used or controlled by them in the manner prescribed by the Constitution.

I have trespassed long on the indulgence of the Committee; my apology is, that the subject is one of vast importance and interest to the people; and whatever may be the decision of the House, my consolation arises from an honest but feeble attempt to protect to the people the blessings of the Constitution of the United States, which forms the rock of our political safety, and which we must support with reverence if we wish to remain happy, united, and free.

Mr. HOWARD observed, that when it was recollected that the question which now presented itself for our discussion and decision was a Constitutional one, of the highest interest and concern, it would furnish some apology for his partaking in the debate so soon after his admission to a seat. It was said that they trod on delicate ground in deciding this question, for, by their vote, they pronounced the law of a sovereign State either to be valid or null, and of no effect. He said, however delicate this ground might be, yet, if the path of duty led them over it, he hoped they would enter upon it with caution, firmness, and deliberation.

The Legislature of Maryland, said Mr. H., has passed a law superadding to the members of this House qualifications other than those required by the Constitution of the United States. Those gentlemen who advocate her right so to do, seem to think, when we undertake to determine the Constitutionality of the law, it amounts to an infringement of her rights as a sovereign State; in fine, that this becomes a question of power between the General Government and the State sovereignties. Mr. H. said, for his part he thought differently: that, as a member of this House, he not only disclaimed all power to legislate upon the subject of the qualifications of the elected, but denied the right of Congress either to dispense with those required by the Constitution, or to superinduce others. He conceived that the qualifications of members was a fundamental regulation fixed by the Constitution, and unalterable but by a change or amendment of the instrument itself.

While some gentlemen on the other side of the question expressed their abhorrence at the exercise of a power derived from implication, others contended that, from the negative words employed in the second section of the first article of the Constitution of the United States, a power was implied to exist somewhere to add other qualifications to the elected, besides those therein required; and that it was left with the States, by virtue of that provision of the Constitution which declared that all powers not delegated to the General Government, nor prohibited to the States, were reserved to the States respectively, or to the people. But, said Mr. H., while gentlemen contend for this rule of construction, they ought to be aware of its operation when applied to other sections of the Constitution couched in similar terms. Apply it to that section which prescribes the qualifications of your Senators, and, if gentlemen be correct, the States have the power to enlarge the qualifications of a Senator, to say, for instance, that he shall have attained to the age of thirty-five years, instead of thirty; or that he shall have been fifteen years a citizen of the United States, instead of nine, as required by the Constitution; or, what would be still more absurd, that a State has the power to add a new qualification, that no person should be eligible to the Senate, unless he resided in a particular part of the State designated by the law itself. Apply the same rule to the fifteenth section of the second article, which prescribes the qualifications of President, and it proves that the States have the power to declare by law that no person shall be eligible to the office of President unless he is a resident of a particular State or section of the Union. Mr. H. said, if gentlemen would only go through the Constitution and apply this rule of construction to every part of it, the phraseology of which was the same with that of the section under their immediate consideration, they would discover its fallacy, and the endless diffi-

culties and absurdities into which it would lead them. Mr. H. said, gentlemen seemed to think the right of the States to legislate on the subject of qualifications, was well secured and fortified by the provision of the Constitution, "that 'all the powers not delegated to the General 'Government, nor prohibited to the States, are 'reserved to the States respectively, or to the 'people." He considered it a self-evident proposition, that no power could be imparted by the States to the General Government, or reserved from it, which was not previously possessed by them. It, therefore, was incumbent upon gentlemen in opposition to prove that the States, anterior to the adoption of the Federal Constitution, were vested with that power; which could not be done. The States, in the formation of our Federal compact, certainly delegated a portion of their powers, previously possessed, to the General Government, and this reservation of power, so far as it related to the States, had reference to the residuum of those powers which they wished to retain and exercise exclusively.

Mr. H. said, an honorable member from Virginia (Mr. Randolph) had enumerated many evils which might result from the want of power in the States to legislate upon this subject, among others, that a man of color might find his way into this House as a member, for anything which appeared in the Federal Constitution. Mr. H. observed that had he no other security against an event so unpleasant, but that confidence which he had in the discretion of his countrymen in the exercise of their right of suffrage, he would not be disposed to indulge apprehensions; but, were that confidence wanting, he discovered an ample guard provided by the Constitution itself, in that section now under consideration, which declared that no person should be a Representative unless he shall have been a citizen of the United States seven years, &c. Mr. H. observed that the word citizen was a complex term, and in its Constitutional acceptation meant something more than a mere inhabitant; it meant a man possessed of certain civil and political rights: every citizen must be an inhabitant, but it did not follow that every inhabitant was a citizen. Mr. H. asked the gentleman if the man of color possessed those characteristics of a citizen, or whether he was not rather one of those unfortunate people who had no political rights; governed by laws of which he was not only ignorant, but in the formation of which he had no participation. If the gentleman was prepared to say that this kind of person came up to the Constitutional meaning of a citizen, he would admit that the event, equally deprecated by that gentleman and himself, might possibly happen.

Mr. H. observed, that a gentleman from Virginia (Mr. Love) had given an elaborate argument upon this question, which went to show what the Constitution ought to be, instead of proving what it was. To this he could give but one answer; that twenty years ago, it might well have suited the floor of a convention, but was entirely inapplicable to the present inquiry.

Mr. H. said it was unnecessary to inquire how far it might have been expedient to have left the subject of qualification liable to change or modification by the States or Federal Government. He conceived that the people had a right, under the Constitution, to elect any man to this House, who had been a citizen of the United States seven years, attained the age of twenty-five years, and was an inhabitant of the State at the time of the election. He considered the right of suffrage as indispensable to the preservation of our liberties, that it was one of those rights which so long as it was enjoyed and exercised with discretion by the people, so long would they have in their hands the means of putting down odious men and oppressive measures. Mr. H. said that he thought Mr. McCreery was entitled to his seat, not because he was possessed of qualifications required by the provisions of the law of Maryland, but because he possessed those qualifications which were required by the Federal Constitution, the supreme law of the land.

The Committee now rose, and had leave to sit again.

Tuesday, November 17.

Another member, to wit; Marmaduke Williams, from North Carolina, appeared, produced his credentials, was qualified, and took his seat in the House.

Mr. Jacob Richards, from the committee to whom was referred, on the sixth instant, a letter from William Henry Harrison, Governor of the Indiana Territory, enclosing certain resolutions passed by the Legislative Council and House of Representatives of the said Territory, relative to a suspension of the sixth article of compact between the United States and the Territories and States Northwest of the river Ohio; and to whom was also referred a memorial of the inhabitants of Clark county, in the said Territory, in opposition to the said resolutions; made a report, in part, thereupon; which was twice read, and referred to a Committee of the Whole House on Monday, the thirtieth day of the present month.

Mr. Bassett, from the committee appointed on the ninth instant, presented a bill allowing an additional compensation to the Secretaries of the Mississippi, Indiana, Louisiana, and Michigan Territories; which was read twice and committed to a Committee of the Whole on Thursday next.

Mr. Poindexter presented to the House a memorial accompanied with certain proceedings of a number of citizens of Wilkinson county, in the Mississippi Territory of the United States, signed by Joshua Baker, their Chairman, and attested by William Connell, their Secretary, stating certain grievances to which they have been, and are now subjected, in relation to the purchase of lands, pre-emption rights, and other important objects therein specified, which they pray may be taken into consideration, and such relief afforded therein, as to the wisdom of Congress, shall seem meet.—Referred to the Committee on the Public Lands.

Mr. Darby, from the committee appointed on

the twelfth instant, presented a bill to incorporate the Trustees of the Baptist Church, in the city of Washington; which was read twice and committed to a Committee of the Whole on Friday next.

On motion of Mr. JOSEPH CLAY,

Resolved, That a committee be appointed to consider whether any, and, if any, what, alterations are necessary in the several acts for the encouragement of learning and promotion of the useful arts; and that the committee be authorized to report by bill, or otherwise.

Ordered, That Mr. JOSEPH CLAY, Mr. MACON, Mr. NICHOLAS, Mr. MOSELY, and Mr. CROWNINSHIELD, be appointed a committee, pursuant to the said resolution.

DEBTS DUE TO GREAT BRITAIN.

Mr. LYON said some proceedings had come to his knowledge which he wished to expose, which he thought should be done with closed doors; on which the galleries were immediately cleared, conformably to a standing rule of the House.

Mr. LYON then submitted the following resolution:

Resolved, That provision ought to be made by law, forbidding all transfers of rights of action, and of all moneys and other property either real or personal, to or by any subject of the Crown of Great Britain, and also forbidding any citizen or resident in the United States paying any debt or demand to any such subject.

Mr. LYON, on offering this resolution, observed that he had understood that Mr. Erskine, the British Minister, had recently transferred stock possessed by his father to a large amount in the American funds. He said he considered this as a strong indication of hostility on the part of England towards this country. He expressed the opinion that Britain had in numerous instances so infracted the treaty between the two countries that it could no longer be considered as obligatory on the United States, who consequently possessed the moral right of declining, on her part, to respect those stipulations, whose observance might be injurious to her. He said he thought it became the United States in the present state of affairs to hold such pledges as she possessed against the acts of injustice which might be committed by Britain, and that by adopting this resolution, she would retain in her hands the means of indemnity, in case such acts should be committed; and if they should not, no injury could ensue from its adoption.

A universal sentiment was unreservedly expressed that such a step at this time was improper. Not a single member supported the resolution; but all censured its imprudence. The general opinion was that if persisted in by the mover, the doors should be instantly opened, and the resolution rejected in public. Mr. LYON then withdrew the resolution, and the galleries were opened, with the understanding that all secrecy was at an end.

FRIGATE CHESAPEAKE.

Mr. BLOUNT, from the committee to whom was referred so much of the Message of the President as relates to aggressions, &c., made a report.

The report commences with an expression of sensibility at the outrage committed on the Chesapeake; states the receipt of information relative thereto from the State and Navy Departments; presents a general view of the circumstances; observes that it might be said to have been incontestably proved that William Ware, John Strachan, and Daniel Martin, are citizens of the United States. But the committee add, that they conceive it unnecessary for them or the House to go into any inquiry on that part of the subject, as in their opinion whether the men taken from the Chesapeake were or were not citizens of the United States, and whether the Chesapeake was or was not within the acknowledged limits of the United States at the time they were taken, the character of the act of taking them remains the same.

"From the foregoing facts, it appears to your committee that the outrage committed on the frigate Chesapeake has been stamped with circumstances of indignity and insult of which there is scarcely to be found a parallel in the history of civilized nations, and requires only the sanction of the Government under color of whose authority it was perpetrated to make it just cause of, if not an irresistible call for, instant and severe retaliation. Whether it will receive that sanction, or be disavowed, and declared an unauthorized act of a subordinate officer, remains to be determined by the answer which shall be given to the demand of explanation. That answer (now daily expected) will either sink the detestable act into piracy, or expand it to the magnitude of premeditated hostility against the sovereignty and independence of this nation; and until its true character shall be fixed and known, your committee deem it expedient to decline expressing any opinion as to the measures proper to be adopted in relation to it. But, as other acts of aggression have been committed within our ports and waters by British ships-of-war, as well anterior as posterior to this, some of them manifesting the same disregard of our national rights, and seeming to flow from the same contempt for the authority of our laws; and especially as the British squadron, of which the Leopard was one, after being notified of the President's proclamation, ordering them to depart from the waters of the United States, which they knew had been published in conformity to an act of Congress, anchored within the capes of Chesapeake Bay, and in that situation remained, capturing American vessels, even within our acknowledged territorial limits, and sending them to Halifax for adjudication—impressing seamen on board American vessels—firing on vessels and boats of all descriptions, having occasion to pass near them in pursuit of their lawful trade, and occasionally denouncing threats, calculated to alarm and irritate the good people of the United States, particularly the inhabitants of Norfolk and Hampton—all which facts are substantiated by the accompanying documents, Nos. 1 to 6—the committee are of opinion that it is expedient to provide more effectually for the protection of our ports and harbors; but not being prepared to report specifically on that subject, they ask further indulgence of the House, and beg leave to submit for their consideration the following resolution:

"*Resolved*, That the attack of the British ship-of-war Leopard on the United States frigate Chesapeake was a flagrant violation of the jurisdiction of the United States, and that the continuance of the British squadron (of which the Leopard was one) in their waters, after

being notified of the proclamation of the President of the United States, ordering them then to depart the same, was a further violation thereof."

The report was referred to a Committee of the Whole on Monday.

On a motion of Mr. Bassett, that the proceedings of this day, with closed doors, ought to be kept secret, the question being taken thereupon, it passed in the negative—yeas 22, nays 104, as follows:

Yeas—Ezekiel Bacon, Joseph Barker, John Chandler, Orchard Cook, Jacob Crowninshield, Richard Cutts, Ezra Darby, William Findley, James Fisk, Isaiah L. Green, William Helms, Benjamin Howard, Daniel Ilsley, John Lambert, John Montgomery, Ebenezer Seaver, James Sloan, Jedediah K. Smith, Henry Southard, Clement Storer, David Thomas, and Isaac Wilbour.

Nays—Evan Alexander, Lemuel J. Alston, Willis Alston, jr., David Bard, Burwell Bassett, William W. Bibb, William Blackledge, John Blake, jun., John Boyle, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, George W. Campbell, John Campbell, Peter Carlton, Epaphroditus Champion, Martin Chittenden, Joseph Clay, Matthew Clay, John Clopton, Howell Cobb, John Culpepper, Samuel W. Dana, John Davenport, jun., John Dawson, Josiah Deane, Joseph Desha, Daniel M. Durrell, James Elliot, William Ely, John W. Eppes, Meshack Franklin, Barent Gardenier, Francis Gardner, James M. Garnett, Peterson Goodwyn, Edwin Gray, John Harris, John Heister, William Hoge, James Holland, David Holmes, Robert Jenkins, Richard M. Johnson, Walter Jones, Thomas Kenan, Philip B. Key, William Kirkpatrick, Joseph Lewis, jun., John Love, Matthew Lyon, Robert Marion, William McCreery, William Milnor, Daniel Montgomery, jun., Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, John Morrow, Jonathan O. Mosely, Gurdon S. Mumford, Roger Nelson, Thomas Newbold, Thomas Newton, Wilson C. Nicholas, Timothy Pitkin, jun., John Porter, John Pugh, Josiah Quincy, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Mathias Richards, Samuel Riker, John Rowan, John Russell, Lemuel Sawyer, Dennis Smelt, John Smilie, Samuel Smith, John Smith, Richard Stanford, William Stedman, Lewis B. Sturges, Peter Swart, Samuel Taggart, Benjamin Tallmadge, John Taylor, John Thompson, Abram Trigg, George M. Troup, Jabez Upham, James J. Van Allen, Philip Van Cortlandt, Archibald Van Horne, Killian K. Van Rensselaer, Daniel C. Verplanck, Jesse Wharton, Robert Whitehill, David R. Williams, Marmaduke Williams, Alexander Wilson, and Richard Winn.

Wednesday, November 18.

Mr. Mumford presented the petition of a number of merchants of the city of New York, stating, that owing to the ambiguity of the law respecting the importation of copper, some difference of opinion had taken place among the collectors of revenue, and praying that the law may be amended.—Referred to the Committee of Commerce and Manufactures.

Mr. Holmes said he was instructed by the Committed of Claims, to move that they be discharged from the further consideration of several petitions and claims for compensation for services rendered during the Revolutionary war, and to move that they be referred to the committee appointed on claims barred by acts of limitation, &c.—Agreed to.

BRITISH AGGRESSIONS.

Mr. Quincy said the House might have observed, that in the Message of the President of the United States to Congress, delivered on the 27th of October, there was an express reference to a certain Proclamation interdicting our ports and harbors to British armed vessels. It was in Great Britain, he understood, an universal Parliamentary rule that proclamations of this kind should be laid before Parliament; and in this country it had heretofore been the usual practice. In the case of the Proclamation of Neutrality, issued by President Washington, in 1793, in his first communication to Congress, he laid it before them, and it was entered on the Journals. Circumstances of however great notoriety were not official information on which they could act; but, were it so, he had not been able to find it in any papers he could procure. He had expected it would have been connected with the report of the committee on aggressions; but, as it was not yet before the House, he moved the following resolution:

Resolved, That the President of the United States be requested to cause to be laid before this House, a copy of his Proclamation interdicting our harbors and waters to British armed vessels, &c., referred to in his Message of the 27th of October last.

Mr. Crowninshield could not see any necessity for calling for this paper. He well recollected that the President had issued proclamations on other subjects which had never been laid before the House. That issued in the case of an aggression committed by Captain Whitby, commanding an armed ship of Great Britain, had not been transmitted to the House; so, in the case of the famous conspiracy of Mr. Burr, a proclamation was issued at the time, and not laid before the House, nor had the House thought necessary to call for these papers. They were before the public, and every member of the House must have perused them. Mr. C. wished his colleague to show some necessity for the present call; for he could see none. The practice which had taken place in other countries was not to govern them; he might as well have drawn a precedent from the practice of France, Germany, or any other country, as from Great Britain. Besides, he doubted whether it was the practice there. It was well known that, under that Government, the King and Council legislated in a variety of instances. The citizens of this country had suffered severely by these measures. They legislated for neutrals in this way, and property to an immense amount had been taken from our merchants under these orders, and Mr. C. did not know that their acts in such cases had been laid before the Parliament, or even called for. He should, however, have no objection to the call in this instance, but that he saw no necessity for it. The gentleman might perhaps not have seen the Proclamation; but it was well known that it had

been published in almost all the papers in the Union. It first appeared in a paper of this city, and he presumed was copied from that paper into the others. He had no doubt but the Proclamation would be communicated, or any other paper that might be called for.

Mr. ALSTON said, it was certainly very immaterial whether the resolution was adopted or not; but it was certainly causing considerable trouble for nothing, to submit such a resolution to the House. The gentleman might have laid his hands on it in any paper published in the Union. Did that gentleman receive an official copy of the proclamation for convening Congress at this time? If he did, Mr. A. said he had an advantage over him; for he saw the Proclamation in the newspapers, and came on in consequence; and if there had been any proclamation issued, Mr. Q. could have found it in the newspapers. He had an objection to this resolution, because it was going out of the way; he had never before known an instance of a call upon the President for any proclamation which he had not thought proper to lay before them.

Mr. QUINCY said he had cited the example of Great Britain, because that was the country from whose Parliamentary practice so many precedents had been drawn. The Proclamation of President Washington, however, was published in all the papers on the continent, and yet the President had laid it before Congress on the first day of the succeeding session. He would refer to the mode in which it was presented, in order to convince the House it had been heretofore done. The case was thus: The President of the United States, after some prefatory observations, tells them that the Proclamation laid before the House had been issued. Immediately after this, the Journal says, a Message was received from the President of the United States, enclosing a copy of the Proclamation. The case in the present instance was of much more importance: he had no conception, before he saw the report of the committee, but that it would be laid before them; he had not conceived it possible that it would not be laid before them in some way. It had been said, that he should give reasons for calling for it. He thought that in an important case like this the House should know what was done. He had no objection to the Proclamation; but it contained certain national principles to which they ought to refer.

He was at a loss to account for the opposition which this motion received from some quarters of the House; it was impossible it could be made on any other grounds than a determination to vote down at all events any question that might be moved, or any inquiry that might be requested on the part of gentlemen of one description in the House. It seemed to him, to be following up the advice which had lately been given to them through the channel of a paper printed in this city, which was understood generally to speak a demi-official language. I have before me, (said he,) the words in which this House were a short time since addressed in that paper, by a person making observations on a motion which Mr. Q. had made, and which was negatived. Mr. Q. then read the following paragraph from the National Intelligencer, of November 9:

"Let them weigh well the advice of an enemy before they adopt it. Let them act as they have done in the present instance. Let them entertain no apprehensions on the sense of popularity, even though their adversaries should sound the tocsin of alarm, and declare themselves in patriotic strains the exclusive friends of the people. Let them remember that while their opponents have nothing to do but talk, *they have to act.*"

And was this the language in which this House was to be addressed through the medium of a newspaper printed at their doors? Was a mere Printer to obtrude upon them his advice, as to what course they were to pursue, in relation to the interest of the nation, and to denounce a portion of the House as unworthy of notice or confidence? He hoped not. But he could account for the opposition which was now given to this motion from no other reasons; for if a Proclamation of this kind had been issued, they ought to have it before them.

Mr. Q. said, he possessed no interests different from any other member of this House; and, assuming the right to which he was entitled, he would ask for information when he had occasion for it.

Mr. CROWNINSHIELD felt much surprised at what had been said by the gentleman last up. Had Mr. C. said anything about it, had he made any allusion to what had appeared in a newspaper in this city; the publication was made before he had been able to arrive at this city. [Mr. QUINCY here remarked, he did not refer to him.] Mr. C. did not know to whom he could refer, except to him or his friend from North Carolina. He had no intention to make any remark to hurt the gentleman's feelings with respect to what had appeared in a newspaper of this city; but what relation could that have to the subject under consideration? If the paper alluded to had infringed any privilege appertaining to him as a member of that House, of which Mr. C. said he knew nothing, he had his remedy. If of a personal nature, the gentleman had other means of satisfaction. He was perfectly at a loss as to the object the gentleman could have in bringing the matter up now. Mr. C. had alluded to the same paper: It was the only paper of any consequence in the city, and the President was obliged to take that course to circulate official acts throughout the Union. It had always been the custom of the President to publish his Proclamations, but in no instance had he laid them before the House. The two extraordinary sessions of Congress had been held by Proclamation published in the newspapers, and the Proclamations for convening them had not been laid before the House. It having been done by another President had no bearing on the present case: no law existed authorizing President Washington to issue such a Proclamation, as that referred to; but the Proclamation now referred to, as well that in the case of Mr.

Burr were issued under an act of Congress. Mr. C. had no particular objection to the call; but he could not see the necessity for it. With respect to precedents in other countries, he wished them to have no influence on the proceedings in this.

Mr. Burwell did not rise to oppose the resolution; he was willing that the Proclamation should be sent to them by the President; but the gentleman had expressed his surprise that he did not find that Proclamation contained in the report of the committee. The only reason was, that they had supposed it was sufficiently official in the newspapers, and had referred to them when occasion required, as they would have done to any other authority. He held it a correct proceeding, that it was the right of any member of that House to call for any information relative to any subject; he should always favor such an application; he therefore did not rise to oppose the gentleman's motion, but to apologize for the committee's not having reported it.

Mr. Dana, said, that the observations of the gentleman from Virginia had been made with his general candor he had no doubt, but the committee considered such reference as they had made correct; but as no public prints were strictly official, and as they were called upon to deliberate on the Proclamation itself, he thought it necessary they should have it before them. Were they not called together on this subject particularly, he might not see the same necessity for having it; but as it was to be the basis in some measure of their proceedings, they ought to have an official copy of it. Mr. D. also thought it was more correct, whenever Congress were called together by Proclamation, that they should be specially notified. The gentleman from Massachusetts, was in an error so far as related to the form of giving notice of extraordinary sittings; he had understood the gentleman to say, that Congress were called together by a Proclamation, published in a newspaper, which was official notice. This was not the correct course. It was true they were now all gathered together; but their journals would not show how. When an extraordinary session had been called formerly, a letter had been addressed to each member from the Secretary of State, enclosing the proclamation for the purpose; and this was capable of being done in every instance, by transmitting these letters to the Executive of each State, who might notify them individually. This had been the course, and he thought it more correct than the other.

The question on the resolution being taken, was carried, 70 to 32; and Messrs. Quincy and Burwell named a committee to wait on the President for the purpose.

MARYLAND CONTESTED ELECTION.

The House went into Committee of the Whole; Mr. Bibb's amendment still under consideration.

Mr. Desha was opposed to the amendment offered by the gentleman from Georgia, because it declared that Mr. McCreery was elected agreeably to the laws of Maryland, which appeared to him very doubtful. As the law of Maryland made it necessary for the candidate to reside in the town of Baltimore, he could not think Mr. McCreery's coming to the city five or six days previous to the election, could be considered an actual residence, especially when his family had resided in the country for two or three years. He was opposed to it for another reason. He did think the agreeing to this amendment would be virtually sanctioning the constitutionality of the law of Maryland.

Believing this to be a very important question, a question in which a great Constitutional point was involved, he wished to assign the reasons that should influence him to vote. In the first place, said Mr. D., I will declare that I am never willing to give up any privileges or rights guarantied to me as a free citizen of the United States. Believing it to be my privilege to vote for whom I may think proper within the limits of the State in which I reside, and thinking it to be the true spirit and meaning of the Constitution, that I am bound by a solemn obligation to support, I would stand with firmness in opposition to any attempt that might be made, by any man or set of men, to deprive me of that privilege. The Legislature of Maryland passed an act of Assembly dividing the State into Congressional districts, and I think very properly too; because I consider it as a great convenience to the people in their elections, and where an agreement takes place among the people of the States, it may be done and be no infraction of the Constitution. But does the Legislature of that State suppose they have the power to confine men as candidates to certain situations, or to abridge the liberty of the voters, so as to deprive them of their choice if they should reside within the limits of the State? If they do, I hold it as an assumption of power, not warranted by the Constitution, because, if they have the power to confine men as candidates to certain districts, from the same reasoning, they might confine their candidates to any certain town, and direct that the whole number of members allowed to the State, should reside in that town; by which the expanded principles of republicanism, that diffuse justice and liberty throughout the land, would be narrowed down to a contracted aristocracy. Could this be the meaning or the intention of the framers of the Constitution? I think not. Neither do I believe it to be consistent with the true letter or spirit of the Constitution. The second section of the first article of the Constitution points out the qualifications of Representatives—it makes a certain specified age one necessary qualification, a certain number of years residence within the United States a second qualification, and actual residence within the State to which he is a Representative, a third qualification. These three are all the qualifications required by the Constitution for Representatives. Is it presumable, if other qualifications had been thought necessary, that the framers of that instrument would have omitted so important a point? What would be the consequence that would inevitably arise from the States having the power to add qualifications to

the elected? The consequence would be, the want of uniformity in the qualifications of the members on the same floor, which in my conception would be a serious evil; inasmuch as it would have a tendency to produce discord and jarrings in council, the result of which might be productive of the downfall of the republican fabric. The States have the power of fixing the qualifications of the electors, but not the elected. In speaking on this question, the gentleman from Virginia (Mr. RANDOLPH) thanked his God, in very emphatical terms, that the qualifications of electors in his State were bottomed on the soil. I am equally as thankful as that gentleman, that in Kentucky the qualifications of electors are bottomed on reason and liberality, or in other words, age and residence, and not on an aristocratical foundation. But, sir, to the point. I think the powers of the Federal and State Governments ought to be kept distinct and separate. The Federal Government ought strictly to adhere to the powers delegated to it by the Constitution; but ought not in any instance, to encroach upon the State sovereignties, nor ought the State Governments to encroach on the Federal powers; but, on the contrary, they ought to be extremely tenacious of their own. Their powers by the Constitution are particularly designated, and in my opinion distinct and separate; and while they continue to act so as not to transcend the powers delegated to them by the Constitution, they will stand as a prop to each other. No storm, be it ever so violent, or come from what quarter it may, will be able to shake the fabric. But when even the State sovereignties and Federal Government get to jarrings, or by encroachments impingeon each other, the props are removed and the fabric will be in danger of falling. We are placed here as guardians of the people's rights and privileges. Do not then let us hold out with one hand a fair appearance of zeal for the rights of the people and the public good, and at the same time take every advantage imaginable with the other, by curtailing their Constitutional privileges, and, instead of allowing the people a complete range to select a man worthy of representing them in Congress, confine them to certain situations. I dislike this kind of political hypocrisy. I dislike anything that looks like sporting with the rights of the people, with the rights of those that I consider the firm supporters of the republican fabric. One word as to the pretensions of the petitioner, Mr. Barney. He prays to be admitted to a seat in place of the sitting member. Admitting that Mr. McCreery was not eligible, I should not consider myself at liberty to vote in favor of Mr. Barney taking his seat as a member in this House. It would be a vital stab to the liberty of the people, in not allowing a majority to govern. Supposing there had been but the two candidates, Barney and McCreery, and that Barney being very unpopular had got but few votes, and McCreery being very popular had got nearly all the votes that were given; but owing to ineligibility arising from want of age, residence, or some other cause, could not be admitted to a seat in this House. I ask, could any man in his reason, say that Barney was entitled to a seat? Could it be the will of the majority? No, the answer must be in the negative. For these reasons, in addition to what has been offered, I am bound to vote in favor of the report made by the Committee of Elections—considering this House as possessed of the legitimate power to judge of the qualifications of its own members.

Mr. SAWYER said, that after the few preliminary observations he took the liberty of offering the other day, he meant to trespass but a moment or two on their patience at present. If the arguments which had been offered on the other side of the question, depended upon their own weight, he should not consider them of such a nature as to endanger the refutation of those which had been employed by the gentlemen on his side. But if they could succeed in their earnest endeavors to dragoon the Constitution of the United States into their service, then indeed they would become truly formidable. He confessed, however, that after all that had been said on this subject, he could not see how this question could be placed on Constitutional grounds. Perhaps the gentlemen could enlighten him a little by explaining the nature of the tenure under which they held their seats in that House. Why, is it not predicated upon an act similar to that which they now condemn as unconstitutional? Were they not elected from separate districts in pursuance of acts made, requiring them to become residents of those districts? But this, the gentleman who had first preceded him, (Mr. DESHA,) admitted was not unconstitutional. Where was the difference between a person's being required to reside in one given place, more than in another given place within a State? Between residing within a county or a town? It was not disputed, that the law of Maryland, so far as it regarded the district, or county of Baltimore, was perfectly proper. But the moment it presumed to touch the city it became unconstitutional. By what Owyheetian priestly art had the gentleman thus contrived to taboo the city of Baltimore, by laying her under a Constitutional interdict? It was really useless to dwell longer on this point. The grounds which he had taken had not been, nor could they be shaken; and to answer the arguments of the gentleman, would oblige him to recapitulate those which had been already so ably and so forcibly employed by his worthy friend from Virginia, (Mr. RANDOLPH) and another gentleman from the same State (Mr. LOVE.)

If the gentleman from Maryland had really felt, as he had declared, too much delicacy to have voted on this question, he thought he would also have felt too much to have spoken on it. He would not have taken up an hour and a half of the time of the House in discussing a question, in the event of which he was so immediately interested. But what did the whole of his speech amount to after all? Why, it was literally *vox* and *præterea nihil*. It has already been refuted by anticipation. It was like all the speeches on that side of the question, either composed of the most strange, violent, and unnatural suppositions,

or of political propositions in which they fully agreed. The whole of the instances and examples which gentlemen had cited against what they called narrowing down, or to use a culinary figure of the gentleman from Kentucky (Mr. Rowan) against frittering away this article of the Constitution, were such as were expressly prohibited by that instrument. It expressly declared they should not extend the qualification to more than twenty-five years of age, seven years' citizenship, and one year's residency; but it did not contain a syllable against their designating the place where that residency was to be accomplished. Why would gentlemen continue to introduce cases of express prohibition, such as were never denied, and bring them to bear upon such as were purely discretionary and unprohibited? If they had no new grounds to go upon, he hoped they would spare the House the pain of being obliged to hear the constant repetition of arguments which could have no relation to the subject.

If the law of Maryland had required a person to be twenty-six years of age, eight years a citizen, or two years a resident, then indeed there would have been some grounds for the objection of unconstitutionality, for there the Constitution spoke an audible language. But the law of Maryland required no such thing; it only pointed out the place where the residents were to remain no longer than the time limited by the Constitution. The Constitution had led them into a strange land, and left them to rove about in uncertainty; but the law of Maryland, in the true spirit of hospitality, and perhaps of prudence, had conducted them to a spot of rest and repose. This conduct of Maryland was perfectly ancillary to the Constitution.

As the fund of argument and reason seemed to be pretty well exhausted on this subject, which was evident from the constant repetition that occurred, by way of diversifying the entertainment a little, he would put an allegory to the gentleman from Pennsylvania (Mr. Findley.) Suppose that he should happen to be travelling in company with some fifteen friends on a journey, until, wearied with fatigue and hunger, they alighted at an humble cottage. The hostess was a plain old lady, who in the hurry and confusion of lately setting out in the world, had not been able to provide a sufficient stock of necessaries and furniture. She, however, without any idle parade of words or ceremony, offered them the best she had about the house, which might happen to consist of a large tray full of hominy. In looking about for something to eat with, the gentleman might find an old one-pronged fork, placed by the side of his plate. Would that gentleman feel himself restrained from taking out his knife and whittling himself a kind of spoon or paddle to feed himself with? Would he sit there and starve over his hominy, while the rest of the company were helping themselves very heartily with such instruments as they could get hold of, for fear the old lady would dismiss him from her house, if he attempted to use any other instrument than the one-pronged fork? No, sir, he would have a better opinion of his hostess' civility than to think it necessary to affect this squeamish modesty; he would naturally conclude that as a fork was placed by the side of his plate, her intention was that he should eat, and that it would be quite immaterial to her what means he employed to fulfil that object. Yet that gentleman would starve the State of Maryland by denying her the liberty of using a spoon to eat out of the great political dish, while all her sisters were using the same instruments, merely because a one-pronged fork was placed by the side of her plate at the Constitutional table.

His worthy friend from Virginia, (Mr. Randolph,) and also the gentleman from Georgia, (Mr. Bibb) seemed to differ with him in opinion with respect to Mr. Barney's claim to a seat in that House. He had since reconsidered the subject, and given their arguments a due consideration, but, with the utmost deference to their superior judgment, he still retained the same opinion he expressed the other day. An insuperable difficulty would arise from a contrary treatment. If two candidates from the county should get more votes than the one from the city, how should they remove the difficulty? And the House might be well assured this would always be the case where more than one offered in the county, because it contained a large majority of the voters, and they were allowed to vote for two candidates. If, therefore, through political avarice or accident, the county candidates should get more votes than the city one, the same inconvenience would arise that was complained of at present, and the city would be deprived of her rights, unless the House interfered in her behalf, which interference had as well be first as last. He was well aware of the case of John Wilkes, of the Parliament of England; but, although he revered the principles on which the last decision of that case was grounded, still he must think there was no similitude between the two cases. There was no express act of Parliament directing the freeholders of Middlesex how to proceed in their choice, and the county, by an unjust *ex post facto* act, was stripped of the privilege of suffrage. But was such the case with the county of Baltimore? Are not her rights admitted and respected? He thought they were, though in respecting them the House did not feel disposed to forget those of the city; and the case of Patton, from Delaware, read the other day, was precisely in point. Besides this, if the principle contained in the report of the Committee of Elections be admitted, Mr. Barney would still be entitled to a seat, for he had more votes than some of the members returned from Maryland, and as a residence or non-residence in a district was thought immaterial, he would certainly be entitled to precedence of those over whom he had that majority. But if any gentleman could reconcile the rights of the city of Baltimore with the abandonment of his claim to a seat here, he should not be tenacious of his opinion. Mr. S. did not think it necessary to take up any more of the time of the Committee on this subject; it had already been treated in so master-

ly a manner by the two gentlemen from Virginia, (Messrs. RANDOLPH and LOVE,) that he should be satisfied both in saying and hearing no more upon it;—unless, indeed, gentlemen would treat the House with something new; unless they would give them something besides objections, which they had always admitted, or something besides unnatural suppositions, which could never be realized without the people's becoming (what they are now said to be) their worst enemies. But, before he concluded, he would just take notice of one species of argument, remarkable for its singularity, that was made use of yesterday by the gentleman from Georgia, (Mr. BIBB.) He had attempted to show that Mr. McCreery's going to Baltimore, six days previous to the election, rendered him a competent resident, under the law of Maryland! What was the general acceptation of the word "resident" in the eye of the law? If they recur to the law of Maryland of 1790, it was there declared to be a residence "of twelve calendar months immediately preceding the day of election." That of 1802, having reference to the same subject, was to be taken with the like meaning, for it was a rule universally applied to the construction of laws, that, where they were enacted on the same subject, and had the same object in view, they were to be construed as one and the same law. This being the case, the act of 1802 having reference to that of 1790, and co-operating in the same case, there could be no doubt but that the Legislature intended that residence which was defined by the preceding act, viz: a residence of twelve calendar months immediately preceding the election. The reason the distinction was not repeated in the last act, must have been from a supposition that their intention was sufficiently expressed and understood already. After removing into the country, and living three or four years there, could Mr. McCreery pretend to reinstate himself in his residency in the city by returning there a few days before the election? But, said the gentleman from Georgia, (Mr. BIBB,) he spent his winters here, in the country's service. Suppose he did, whither did he return at the end of each session? Where did he spend his springs and his summers, and his autumns? Why, forsooth, in the *country's* service also. But, notwithstanding all this, notwithstanding he might go off and stay away twenty years, and acquire a residence in twenty different places, yet if he could jump upon his horse, and gallop into the city a few minutes before the poll was open, he was to be considered as having a fair claim upon the support of the citizens on the score of residency. Were the laws of a free and respectable State to be evaded by such shameful expedients as these? This was adding insult to injury. He really felt his pity excited for that much injured State, when he saw the most solemn acts of her Legislature made in the House the mere sport of subterfuge. But, if she submitted in silence to this unprovoked insult and degradation, he could only say she deserved them. He thought, however, he understood her temper and spirit better than to suppose she would. He thought she would show a becoming spirit of resentment, a becoming sense of her dignity, by remonstrating against this unjust aggression upon her rights. And he also thought that her complaints would be heard and reciprocated by every State in the Union. The alarm would spread from State to State like an earthquake. He repeated that they were treading upon sacred ground. The House ought to be cautious how it proceeded. The States were composed of combustible materials, and if this report were agreed to, he feared it would be throwing a carbonic acid among them that would cause an effervescence to take place, and if not, an explosion, and much of the fixed air of discontent and dissatisfaction would escape. Talk not about foreign wars, when they were about to declare a most deadly war against their own States. The States had a thousand times more danger to apprehend from the House than from any foreign Power. But, let the worst come, said Mr. S., the States will have the consolation to think they have some rights left which some gentlemen will not find so easy to explain away, and it may be well for some gentlemen if they do not find it time, ere long, to give a small practical essay of them; it may be well for some gentlemen that, as they appear so difficult in seeing the rights of the States, at present in dispute, if they do not adopt another mode of making them comprehend other, though perhaps less agreeable rights, which are not of so disputable a nature.

Mr. LOVE said that, notwithstanding he had already greatly trespassed on the time of the Committee, as the grounds originally taken in favor of the report had been so totally changed, he hoped he should be pardoned if he again troubled them with a few observations on the subject as it was then presented to them.

It was originally contended, on behalf of the report, that it was correct, principally on two grounds: First, that it was necessary to show a reserve made to the State Legislatures, of the power which Maryland had, in this case, exercised, and that no such reserve could be shown; and secondly, that the sole power of constituting the qualifications of the Representative rested with Congress, under that clause of the Constitution which has made each House the judge of the qualifications of its own members. This, he said, was the language of the report, and such the reasons urged in support of it. But these grounds were now abandoned, and the gentlemen from Massachusetts and Maryland (Mr. QUINCY and Mr. KEY) seemed to contend for the single position, that neither the State sovereignties nor the National Legislature have the right to act on the subject embraced by the law of Maryland.

They contend that there nowhere exists in any one branch of the different systems of our Government the very simple, innoxious, and necessary power of confining the residence of the elected to the district he represents; that this power is still a sacred deposite, untouched, and sleeping in maiden innocence in the bosom of the people. If this strange and novel doctrine be, indeed, correct, how wonderfully have we all been deceived!

We who have been habitually chaunting the praises of our Government as the most perfect of all hitherto invented, after a twenty years' experience, are surprised with the discovery, that, in no part of this great and ingenious fabric of political institution, there exists the powers to give it the necessary impetus to a regular and proper motion.

For, said Mr. L., if there is no power either in the State or General Government to restrict the residence of the elected to the district which he represents, the objects for which he may be chosen, to some of the most valuable interests, will be totally frustrated, and the representation be an inefficient one. A member may be sent to represent a district, who is totally ignorant of its local concerns; and, from Norfolk, in Virginia, might be selected one who might be called the representative of a district bordering on the Ohio, or the reverse. In Virginia, and, perhaps, in some other of the States, an evil of this kind would be very like to occur; for although we have a representative for every thirty or forty thousand inhabitants, yet where the right of suffrage is in general confined to the freehold, there will be found, in some of the districts, a much larger portion of qualified voters than in others.

But, gentlemen have told us that we are not to discuss the questions of convenience and expediency. Sir, said Mr. L., such great evils as must flow from the adoption of the principles contended for by the friends of the report, will obtrude themselves on our attention, and must go far to show the fallacy or soundness of construction; for certainly there can be no more just view of the propriety of a principle than to inspect its consequences. The particular local interests of the different parts of the Union, it is of great importance, even now should have an intimate and efficient representation; but, should we continue to enjoy the blessings of peace, the importance of local information will become more indispensably necessary, when the surplus of our treasuries shall meet their just appropriations toward national improvement and general convenience. Indeed, he found it difficult to lose sight of the argument of inconvenience, for, in every aspect of the subject, it seemed to form a prominent feature. If, as gentlemen are disposed to narrow down the power of the States, we agree to the construction that an act of the State Legislature restricting the elected to a residence among his constituents, be unconstitutional, and of course void, as having abridged the range of choice the Constitution had secured, he knew not precisely what might be the situation of other States, but from Virginia there was not at this time a duly qualified member on the floor of Congress, and the good people of that State are at this hour unrepresented in the national councils. So, too, had the Legislature of Virginia, in the opinions of gentlemen, transcended her Constitutional powers under this Government, in restricting the residence of the Electors of President and Vice President to their particular districts; and, drawing the same conclusion from similar principles, the election of those officers may also be contested, having their foundation in a law which had abridged the freedom of choice, and was, therefore, null and void; for the term "manner" is found alike in the delegation of power to the State Legislatures in both instances, and must have the same construction.

Mr. L. said, he would now beg leave to draw the attention of the Committee to the only point of argument, which seemed to be relied on, to sustain the report; a point which was broached first by the honorable chairman of the Committee of Elections, and which had since been urged with great force and ingenuity by the gentleman from Massachusetts, (Mr. QUINCY,) and the gentleman from Maryland, (Mr. KEY.)

The success of this argument must depend, said Mr. L., upon the construction given to the legislative powers of the several States, as derived to them, under their general delegation of power from the people. He contended, he said, that, by virtue of the power bestowed on the Legislatures of the States, they have a right to do anything not expressly prohibited to them by a bill, or declaration of rights, enumerating those which are supposed to be inalienably in the people. In this respect being precisely opposed to the nature of our federal institutions. That he was correct in this opinion, he felt great confidence from the manner in which the National Government was brought into existence. If, said he, it had not been admitted that, to act on the subject of National Government, was originally legitimate; if this was not the case, under what other delegation of power did the Legislatures of the States venture to call conventions to discuss the subject, or how were those conventions organized? It would not, he hoped, be said that our Government, great and omnipotent as it has been contended to be, is not well born, that it is of spurious origin. It appears, then, that this was a power exercised by the States anterior to the existence of rights under the Federal Constitution.

The distribution of powers made by the gentlemen who argue in support of the report, is certainly incorrect. The Legislatures of the States, speaking the language of the people, and representing them in all their interests, must be considered as a party to the federal compact. What is delegated to the General Government? The right of imposing taxes, of declaring war, and concluding peace, with many other important powers, before held by the States, now in some instances wholly, and in others concurrently vested in Congress. The Legislatures of the States, possessed as they are of all the powers of legislation, express only the voice of the people, and are, to all political intents, the people themselves: instead, then, of the distribution of powers, which has been ingeniously supposed to be made to the people as one party, to the States in their political capacities as another, and to the United States as a third, the States and the people of the States respectively, may more properly be considered as one party in conjunction, in the federal compact, and this Government as the other. On the supposition, then, that no power is vested in the Gen-

eral Government but that which is expressly delegated, the States and the people of the States, in their conjunct inseparable capacities, hold the whole reserve.

An objection was made to the exercise of any power by the States, except that expressly delegated to them, because it was said that the State governments, being in operation before the introduction of the Federal Government, could not originally be supposed to have any participation in the powers of it. That the co-operation of the State Legislatures, by virtue of the general powers they held from the people, was necessary, and did take place in order to bring this Government into being, is already proved; but to what absurd conclusions, Mr. L. begged pardon for the harshness of the expression, would such a doctrine lead? The inference would be that all the States which, since the adoption of the General Government had been, or hereafter might be admitted into the Union, would form a proper deposite for the powers contended about, but the original States, who were actually the parties in the manner mentioned to the compact, would be excluded from the exercise of this most essential power. Apply the same doctrines to the situation of a newly acquired territory, and, by a parity of reasoning, it may be said that the people of such territory, not being expressly contemplated, or included in the national compact, shall never be able to enjoy any rights under the Constitution, and the people of the United States must be called together to make this express extension of right.

Mr. L. said, that the arguments of gentlemen had led him to contemplate the subject in another point of view. The gentleman from Massachusetts, (Mr. QUINCY,) had, in his argument on the second section of the first article of the Constitution, introduced a rule of construction, which in itself was an extremely correct one, and which he should take the liberty to use and enlarge on, where, he presumed, it would have a more feasible application. He has said that it is a rule of construction that "the exclusion of a part is the inclusion of the remnant." Apply it, then, said Mr. L., to the tenth section of the same article, and it would have its proper effect; by that section the restrictions on the State governments are enumerated: "they shall not enter into any treaty," &c.; the enumeration is very special, and extends to all the subjects in which the interference of the States would have been deemed inconvenient, or improper. There is no clause in the Constitution which declares that the States shall be further, in general terms, restricted; but there is a part of the Constitution which declares, that the Government of the United States shall have no powers but those granted; the enumeration of restrictions on the Government of the United States cannot, therefore, be assimilated to the enumeration respecting the States; to the tenth section, therefore, the gentleman's rule exclusively applies.

A similar maxim of construction is, that "Exception strengthens the force of law in cases not excepted, but enumeration weakens it, in cases not enumerated." Those rules strongly apply to show, what was the residuum of power left in the States, and that it was intended to be the whole, excepting only those specified to be exclusively delegated to the United States. The word State, is used in the distribution of powers, not Legislatures of States, from which it would seem, that the framers of our Constitution meant in the use of that term the aggregate and united powers of the Legislatures and the people, which indeed in the State Governments are inseparable, to all political purposes and intents.

Mr. L. expressed his surprise at the doctrines which were the other day advanced by a gentleman from Kentucky (Mr. ROWAN,) who, if he understood him right, had said, "that the States were to this Government what the counties were to the State Legislatures." To gentlemen who hold these principles, who contended that this is a great consolidated Government, possessing all the powers of legislation, extended as its empire is over a territory of various climates, leading to various pursuits among its inhabitants, he could address no argument, but had the consolation to believe that the day was past when such doctrines could have their effect on the people of this country.

Mr. L. said he would conclude the remarks he had intended to make on this great Constitutional question, by further noticing some of the observations which had fallen from the gentleman from Maryland (Mr. KEY.) That gentleman, after an elaborate argument to prove that the States do not possess the power to restrict the residence of the elected to the district which he is supposed to represent, inasmuch as that power is not expressly delegated to the States by the Constitution, has observed at some length on the positive grant of power to them, to regulate the time, place, and manner of holding elections; and has attempted progressively to prove, that it does not grow out of either of those incidents. If, said Mr. L., the advocates for the constitutionality of the law of Maryland doubted that the right of the States on this subject was fixed in the deepest foundations of our Government, still he humbly presumed, that on arguments of convenience, a construction would be given to the word *manner*, which would embrace the power of restricting the residence of the elected. If the manner of holding an election authorizes a restriction as it respects the elector, by confining his right of suffrage to the district in which his freehold or qualification, whatever it may be, is found, it is equally consistent with the manner of holding the election, that the elected should also be confined to such district. For it is no part of the qualifications of the electors of the most numerous branch of the State Legislatures, that they should vote in a county or precinct where their right of suffrage does not exist. From a review of the opinions which had been given by men of abilities, both among the opponents and advocates of the Federal Constitution, he thought that if there were any who had doubted that the Constitutional rights of the States did not extend, by implication or general reserve, to the subject embraced by the law of Maryland, that such had considered the

power as expressly bestowed. The appearance of contradiction to this opinion, he said, might be reconciled. The authority of *The Federalist* does not apply; as the authors of that work only offer their opinion, that no substantive disqualification could be imposed on the elected.

The opinion of Mr. Tucker has also been used for the same purpose. The authority, Mr. L said, he admitted to be entitled to the highest respect, but what was the opinion; it was merely the expression of a doubt whether the Legislature of Virginia had not transcended their power, by imposing a positive, substantive qualification on the elected. The opinion had reference only to the requisition of the Legislature that the elected should possess a freehold; it is on this part only of the qualification he could have intended to express a doubt, as appears clearly from his mode of reasoning, as to the sympathy of feeling and interest between the elector and the elected.

The gentleman has relied much in his argument on the opinion of Mr. Nicholas, expressed in the debates of the Virginia Convention. He has been pleased to compliment the assemblage of great men, which took place in Virginia on that occasion. It was indeed an illustrious body; many of them, it is true, no longer live to counsel the nation, but their memories are inhersed in the bosoms of their countrymen. The opinion of Mr. Nicholas has been applied to purposes which he could never have foreseen. The latter part of the same paragraph, which the gentleman has read, proves that he did not intend his observations to be applied as they have been; but in page eighty of the debates, he speaks a language that cannot be misconceived or misconstrued. Speaking of the Representatives, he says, "It is a natural 'supposition that every one of them will have the 'greatest interest with the people in that part of 'the district where he resides."

Mr. Mason, in pages 34–5, expresses the following opinion: "I know not," (speaking of the Representatives,) "how they will be chosen, but what-'ever be the mode of choosing, our present number 'is but ten, and suppose our State is laid off in ten 'districts, those gentlemen who shall be sent from 'those districts, will lessen their own power," &c. We all know that gentleman was opposed to the adoption of the Constitution; his talents, his virtues, his lynx-eyed patriotism, can never be forgotten. Can we presume then, that if it had ever entered the head of so able an opponent of the Government and advocate for the State authorities, that this essential power of regulating elections was not reserved to the States, that he would not have laid hold of this defect, as affording the strongest objection to the general system? Again, in page 97, Mr. Randolph says, "the State will be laid off and divided into ten districts, from each of these a man is to be elected." The friends to the adoption of the General Government have expressed their opinions that a power was vested in the States to confine the residence of the elected to the district; and we no where find that the opponents to this adoption have complained that this right, so essential to representation, was not sufficiently secured.

But the gentleman has said, "that it could not be expected, that an election law could be introdnced into the Constitution." If indeed it is impossible to do so, and the position contended for that the power of making one is neither in the State or United States Government, we are left without remedy, and all the evils which have been pointed out must follow us to the termination of the Government. The gentleman has asked, if the people should be deprived of their choice? He will pardon me, said Mr. L., if I cannot see the application of this inquiry to the point under discussion; it may happen, that on another occasion, this appeal may be properly addressed to us, but at present it can have no bearing on the question.

It has been resounded, said Mr. L., from different parts of the House, that we must not shrink from the decision of the Constitutional question involved in this report. It often happens, said Mr. L., that more true courage and fortitude are displayed in a wise forbearance from controversy than is required to stimulate us to the impetuous, headlong attack. He was one of those, he confessed, who thought it would be better to avoid this conflict of powers. He had already offered his reasons why he thought so; but would take the liberty once more to remind that committee of the inequality of such a contest. That the States alone can wind up, and preserve the regular motion of the great machine of Government, and without the periodical application of their powers its springs must lose their elasticity, and its wheels cease to move; but he hoped he had already said enough on this subject, and would add nothing more, on the great Constitutional question, in the discussion of which they had been involved.

He had given no opinion, and he felt at a loss how to give one, on the facts stated in the report. To him there appeared to be a confusion and somewhat of uncertainty in the statement. He wished to know what kind of residence, the occasional residence spoken of by the committee in the fourth paragraph of the report was. If it was explained to be such a residence as was used by the returned member, (Mr. McCreery,) for the purpose of conducting the common occupations of his life, it would go far towards satisfying his mind. Such residence might, perhaps, be considered as sufficient at least to satisfy the intention and spirit of the law, which could only have required a residence, in order that the Representative might have the more intimate knowledge of his constituents; and it was strongly presumable, that where a man pursued his usual avocations he was there best acquainted with the local subjects of interest; but again he found the report contradicting the supposition of any residence for the legal period, where it states that "he resided himself in the city of Baltimore five or six days before the election," which seems to exclude the idea of a long residence of any kind in that city. If indeed the report is thus difficult of construction, or contradictory, it was aptly likened by a

gentleman, the other day, to the special verdict of a jury, and we should be entitled to a *venire de novo*. It would surely be desirable that an explanation on this subject should take place; perhaps it can be afforded by some member of the committee; if it is not, certainly a course might be taken which would give us the information required.

The amendment offered by Mr. BIBB was now negatived by a large majority.

Mr RHEA, wishing to make an amendment, said that he supposed that every report of every special committee was liable to amendment by the House.

The CHAIRMAN decided that a report could not be amended; if an appeal were made, however, he would take the sense of the House upon it.

Mr. RHEA appealed from the decision of the Chair.

The question on this decision being put there were, for it 73.

The question recurring on the report—

Mr. RANDOLPH said that, in consequence of the repeated notice which had been taken of the crude observations which he had submitted a few days since to the House, he felt obliged to say a few words more on this question. He was not in any respect qualified to discuss it at large; and it was because he then feared the approach of his present incapacity that he was unwilling for the Committee to rise, the day before yesterday. But, notwithstanding that incapacity, he felt it to be his duty to endeavor, however feebly, to remove some of the difficulties which the gentleman from Maryland (Mr. KEY) had attempted to raise. A memory at no time very tenacious, would not enable him to recollect one half of the points which that gentleman had made in his very ingenious argument. He had set out however with laying down this broad principle, that the choice of the people should be unfettered, and that to limit the range of their selection was to doubt their competency to self-government; indeed (according to the gentleman) it was an infraction of their natural rights. Why then had they formed a Constitution at all? Why had they established those fundamental laws, which the people themselves were as much bound to respect as their public functionaries—a rule of action for all, from which none could absolve themselves? It was because of the radical depravity and original sin of their nature, which called for wholesome restraints. In a lucid interval they had wisely determined to tie up the hands not only of their agents, but of themselves, that when the hour of passion should come, barriers might be opposed to their inconsiderate rashness. Every feature of our Governments, both State and Federal, proved that the people were sensible of the necessity of restraining as well the headlong impetuosity of the multitude, as the inordinate ambition of the few. Where such restraint was not imposed there was no genuine liberty.

Mr. R. expressed his surprise that the gentleman from Maryland, who had argued this question very much like a lawyer, should have taken no notice whatever of an important and conclusive precedent which had been adduced by him. He thought precedent, with the gentleman of the bar at least, outweighed all reasoning which was unsupported by it. The decision in the case of Mr. Patton, Mr. R. said had relieved his mind from some of the uneasiness which he had felt on this subject. In that case the right of the States is clearly recognised and would be again revered, he trusted at no far distant day, when the decision about to be made in the case of Mr. McCreery would be set aside, as a precedent taken from hard, unconstitutional times; for he could conceive no times more hard and unconstitutional than those, in which a single branch of the Legislature of the United States should undertake to declare void and of no effect the laws of States which had been unquestioned for near twenty years—from the very infancy of this Government.

The Committee had been amused with a distinction which some had pretended to find, for the comfort of tender consciences, between a legislative act and judicial decision of that House. What imports it, said Mr. R., whether as legislators you declare the law of Maryland to be unconstitutional, or pass sentence of death upon it in your judicial capacity? Was the law of Maryland less invalidated in the one case, than in the other?

Mr. R. considered the reading which the gentleman from Maryland had given of the Constitution as a poor evasion. He left it where he found it, a mere negative provision, nor could he make it positive unless it should be made to run somewhat in this way; "that every person, who has attained the age of 25 years, and shall be eligible to seat in the House of Representatives." The gentleman had undertaken to find a denial of the power of a State to superadd qualifications to a Representative, in a grant of power to the States "to regulate the time, place, and manner of holding elections," and had contended, with great propriety, that in every grant of the powers not enumerated, and not necessary to carry the enumerated powers into that effect, were denied. Mr. R. said that, at the first blush, the clause in question might appear to contain a grant of power to the States, but look at it for a moment with a steady eye and its complexion varied. It was in fact a grant of power to Congress, with a mere permission to the States to exercise that power until Congress should choose to take it out of their hands. The Government could not have been called into existence, without the intervention of this power, and as it must be lodged somewhere, the States were permitted to exercise it at the sufferance of Congress. This clause, then, being a grant of powers to Congress and not to the States, contained a denial to Congress, and not to the States, of the powers not enumerated in it.

Mr. R. said he had not examined any authorities upon this subject; but if the gentleman would favor him with the debates of the Virginia Convention, he thought he could show that there was nothing irreconcilable between the opinion of Mr. G. Nicholas and the doctrine which he endeavored to support. [Here he read an extract from

Mr. N.'s speech.] This, said he, is very correct and true. The Constitution creates no other disqualification than those enumerated; it leaves a wide field for the State governments in which to act; but Mr. Nicholas's opinion is upon the power of Congress to narrow the ground of eligibility, not upon the right of the State Governments to superadd qualifications. This power they possessed in virtue of their sovereignty. As free and sovereign States, they might do every act belonging to their character as such, which was not forbidden by the Constitution. But, said the gentleman, "the powers not delegated are reserved to the States, or to the people." It appeared to Mr. R. that the principal strength of the gentleman's argument lay in a dexterous use of the word "States." In geography, it implied a portion of country within certain limits. In politics, it might mean the Government of that portion of country, or the people inhabiting it, as socially and politically connected. The framers of the Constitution well knew that in some States, as in Connecticut, the power of the Government was commensurate with that of the people in their original sovereign capacity; that in others, as in Virginia, it was very limited. When therefore the Constitution makes a reservation of power "to the States. or to the people," it merely declares that the State Government shall possess the power where not forbidden by its own peculiar constitution; but where not allowed to exercise such a power by its own constitution, it shall remain with the people. It behooved the gentleman therefore to show that this power, not granted by the Constitution to Congress, nor denied by it to the States, is forbidden by the Constitution of Maryland to its Legislature, and therefore rests in the people of Maryland. And this is a question between the people of Maryland and their own Government, with which Congress had nothing to do.

The gentleman affirmed that in the Senate alone was to be found any feature of a confederated Government. Did he forget, that in one of its most important acts, the election of a President, the House of Representatives voted by States? That at every session they were called over and sworn in by States; and it would be more in the spirit of the Constitution, that the yeas and nays should be taken by States. To prove that they were not the Representatives of the people of the United States, but of the people of the several States, he cited the act, rejected by General Washington, for apportioning Representatives, because that act attempted to amalgamate the whole people into one mass, without respect to State distinctions, and which, when returned to the House of Representatives, was found to be unsupported by a majority, it having in the first instance been passed by finesse. Why were the people of the Territories deprived of Representatives, if that House represented the people of the United States, as united States, and not the people of the several States, as States? But it was asked, what prevented a State from adding to the qualifications of the President? He was the Representative of the people of every State, and therefore it was requisite, that some common agreement, unchangeable by any of them, should subsist between them. But what had the people of New Hampshire to do in the election of members from Georgia? The uniformity of qualification, about which so much was said, was no more necessary than uniformity of stature. The qualification of the voters was not uniform, nor thought necessary to be so. That is left exclusively to the several States, that is, the people and government of those States. The Constitution has deemed them capable of attending to their own interests, worthy of trust; and for the first time a new doctrine was broached. The most violent suppositions were pressed into the service to show that the States cannot be trusted. He might as well suppose that the States might require five millions of acres of land as a qualification necessary to entitle a man to vote; and then most of the States would be wholly unrepresented; indeed none but Yazoo men could vote. There would be an end of the Government. No quorum of that House would ever assemble. Such monstrous cases might amuse, but never could convince. The Constitution had confided to the States, *State interests.* If they were not safe there let them adopt this report, do away all State rights, and then we should have that consolidated Government which the gentleman from Kentucky so much admired, but which he from his very soul detested and abhorred.

The gentleman from Maryland had cited as authority, what Mr. R. had not expected would ever have been produced in that House as such—commentaries on the Constitution made anterior to its going into operation. He did not suppose that the uniform practice of the State Governments and the solemn decision of the House of Representatives in the case of John Patton would be combatted by prophecies upon the operation of the Constitution, when it was yet in embryo. These opinions had no weight with Mr. R. He had not been in the habit of paying great deference to the political opinions of the late General Hamilton, or to those of the negotiator of the Treaty of London, nor did he think the third member of the gentleman's political trinity entitled to more consideration than his worthy co-adjutors. There was in existence, as he was credibly informed, an edition of the letters of Publius, in which the productions of the several writers were designated by themselves. A friend of his had a copy thus marked, and some of the papers which carried many of the doctrines of the late Administration to the farthest lengths, were ascribed to the pen of that gentleman. Of the survivors of this famous triumvirate he could say no less than that they were *par nobile fratrum.*

Mr. Randolph understood Judge Tucker very differently from the gentleman from Maryland. At the time of composing his lectures on Blackstone, he had seen the Constitution trampled upon and set at naught; a sedition law passed in defiance of an express prohibition; and the doctrine of treason laid down by the court, in the case of John Fries, in direct contempt of the Constitu-

tional definition of the crime. Was it to be wondered at, that, when he had seen the most solemn provisions of the Constitution sported with, the judge should fear that the time might perhaps come, when a House of Representatives should disregard the wise and salutary regulations of the States?

In the course of discussion gentlemen had attempted to show, that in prescribing residence in his district to a Representative, the States abridged the rights of the people. There was hardly plausibility in this argument. The States knew that by such a regulation they consulted the interests of the people? What was the case in England. Residence was not required by their laws. A man was competent to represent the remotest borough or county of the empire. What was the consequence? Corruption seeking where she could invest her money to most advantage. The nabobs of the East Indies and of the West, the rich bankers, and overgrown merchants of London, and the great landed proprietary, all contending by intrigue and corruption for the representation of people whom perhaps they never saw. This, as well as the inequality of their representation, perpetuated abuse in their Government. What sort of connexion could subsist between a Representative and constituents whom he never saw, who could hardly find upon the map the place which entitled himself to a seat in the Legislature? Here, as in England, we should see wealthy merchants and great stockholders aspiring to represent every district, in hopes of succeeding in some one of the States. What a door would be opened to intrigue and to corruption too! The time might come when the President of the United States may issue his *congé d'élire* to the remotest district of Maryland or Virginia, and every Representative from those States might consist of courtiers of this place, who had temporary country boxes without the limits of the ten miles square. He stated this as a possible case; at least as probable as some which had been imagined on the other side. It was essential to representation that the elected should be acquainted with his constituents, and that they too should know him well—if it were possible every man, woman, and child of them. He must be one of them.

The gentleman from Maryland had given him credit for talents which Mr. R. entirely disclaimed. He had been pleased to say that he possessed abilities which would secure his election in any district. In drawing this picture the gentleman had sat to himself. It was he who possessed this talent and stood convicted of the actual exercise of it. Mr. R. disclaimed all pretensions to any such endowment. On the question of residence he thought a man's own words and acts might be trusted to for evidence of his intentions and belief—and the measures which Mr. McCreery had taken, a few days before the election, proved that he was conscious that he was not a resident. Of this, however, enough. The question turned solely on the constitutionality of the law of Maryland, for the committee had not pretended to decide the other, or to allow it any weight in their deliberations. Mr. R. concluded by setting the gentleman from Kentucky right as to a matter of fact, that there were States where men of color enjoyed all the rights of citizens—and by recommending to the consideration of the committee the decision of the case of John Patton. He did not think it could be fairly inferred that the Constitution intended, by a loose implication, to deny to the States the power of prescribing qualifications for Representatives, when it expressly vested them with a much more important power, more liable too to abuse, that of prescribing qualifications to the voters. He was completely tired of the subject, and supposed his hearers were equally so with him.

Mr. KEY replied to Mr. RANDOLPH, at considerable length.

Mr. J. CLAY moved to amend the original resolution reported by the Committee of Elections, as follows:

Resolved, That the second section of the first article of the Constitution of the United States, having prescribed the qualifications of the persons who may be elected Representatives in the Congress of the United States, neither the Congress of the United States nor the Legislature of any of the States, can Constitutionally add to, or take from those qualifications.

Resolved, That the several sections of the two acts of the State of Maryland, passed November 1790, and in November 1802, so far as the said sections require that any person elected to serve as a Representative in Congress, from any particular district of the said State, shall at the time of the election be a resident of the district for which he is elected, and which require twelve months previous residence, do add to the qualifications required by the Constitution of the United States, and are therefore void.

Resolved, That William McCreery, returned as a Representative in Congress for the district composed of the city and county of Baltimore, in the State of Maryland, was at the time of his election an inhabitant of the said State, and possessed of all the other qualifications required by the Constitution of the United States, to entitle him to serve as a Representative in Congress.

Therefore, resolved, That William McCreery is entitled to his seat in this House.

Mr. J. CLAY advocated; and Messrs. THOMAS, ALSTON, SMILIE, MASTERS, PITKIN, and RHEA, opposed the resolutions on the ground that they were not in order, or on the score of inexpediency.

Mr. RHEA of Tennessee moved to strike out the word *therefore*, which motion was declared by the Chair to be out of order.

At this time, a motion being made for the Committee to rise,

Mr. SMILIE said, he had wished an immediate decision on the report, in order that the House might be at liberty to enter on national business of more immediate importance; but, from the situation in which he now saw the Committee, he wished they should rise.

Mr. J. CLAY said that if the gentleman wished to consult his pillow or anything else, he might do it; but Mr. C. hoped the Committee would not rise without deciding on the resolutions.

The motion for rising was carried, 72 being in

favor of it; when the Committee rose, and obtained leave to sit again, 74 being in favor of it.

A motion was made that the amendment offered by Mr. CLAY be printed, and negatived, 54 to 34; and the House adjourned.

THURSDAY, November 19.

Mr. JOSEPH CLAY, from the committee appointed, reported a bill authorizing the purchase of certain copies of the Journals of Congress; which was read twice, and committed to a Committee of the Whole.

Mr. WINN, from the committee appointed, on the thirtieth ultimo, to prepare and report such standing rules and orders of proceedings as are proper to be observed in this House, made a report thereon; which was read, and referred to a Committee of the Whole on Tuesday next.

Mr. DAWSON, from the committee appointed on so much of the Message of the President of the United States as relates to our Military and Naval Establishment, who were instructed by a resolution of this House of the eleventh instant, "to inquire into the expediency of selling to individual States or Territories, which may wish to purchase, any arms or ordnance owned by the United States, and which may be parted with without injury to the public," made a report, in part, thereupon; which was read, and referred to a Committee of the Whole on Wednesday next.

BRITISH ARMED VESSELS.

The following Message was received from the President of the United States:

To the House of Representatives of the United States:

According to the request expressed in your resolution of the eighteenth instant, I now transmit a copy of my proclamation interdicting our harbors and waters to British armed vessels, and forbidding intercourse with them, referred to in my message of the twenty-seventh of October last.

TH. JEFFERSON.

NOVEMBER 19, 1807.

By the President of the United States of America:

A PROCLAMATION.

During the wars which, for sometime, have unhappily prevailed among the Powers of Europe, the United States of America, firm in their principles of peace, have endeavored, by justice, by a regular discharge of all their national and social duties, and by every friendly office their situation has admitted, to maintain with all the belligerents their accustomed relations of friendship, hospitality, and commercial intercourse. Taking no part in the questions which animate these Powers against each other, nor permitting themselves to entertain a wish but for the restoration of general peace, they have observed with good faith the neutrality they assumed; and they believe that no instance of a departure from its duties can be justly imputed to them by any nation. A free use of their harbors and waters, the means of refitting and of refreshment, of succor to their sick and suffering, have, at all times, and on equal principles, been extended to all, and this, too, amidst a constant recurrence of acts of insubordination to the laws, of violence to the persons, and of trespasses on the property of our citizens, committed by officers of one of the belligerent parties received among us. In truth, these abuses of the laws of hospitality have, with few exceptions, become habitual to the commanders of the British armed vessels hovering on our coasts, and frequenting our harbors. They have been the subject of repeated representations to their Government. Assurances have been given that proper orders should restrain them within the limits of the rights and of the respect due to a friendly nation; but these orders and assurances have been without effect; no instance of punishment for past wrongs has taken place. At length a deed, transcending all we have hitherto seen or suffered, brings the public sensibility to a serious crisis, and our forbearance to a necessary pause. A frigate of the United States, trusting to a state of peace, and leaving her harbor on a distant service, has been surprised and attacked by a British vessel of a superior force, one of a squadron then lying in our waters and covering the transaction, and has been disabled from service, with the loss of a number of men killed and wounded. This enormity was not only without provocation or justifiable cause, but was committed with the avowed purpose of taking by force, from a ship of war of the United States, a part of her crew; and that no circumstance might be wanting to mark its character, it had been previously ascertained that the seamen demanded were native citizens of the United States. Having effected her purpose she returned to anchor with her squadron within our jurisdiction. Hospitality under such circumstances ceases to be a duty; and a continuance of it, with such uncontrolled abuses, would tend only, by multiplying injuries and irritations, to bring on a rupture between the two nations. This extreme resort is equally opposed to the interests of both, as it is to assurances of the most friendly dispositions on the part of the British Government, in the midst of which this outrage has been committed. In this light the subject cannot but present itself to that Government, and strengthen the motives to an honorable reparation of the wrong which has been done, and to that effectual control of its naval commanders, which alone can justify the Government of the United States in the exercise of those hospitalities it is now constrained to discontinue.

In consideration of these circumstances and of the right of every nation to regulate its own police, to provide for its peace and for the safety of its citizens, and consequently to refuse the admission of armed vessels into its harbors or waters, either in such numbers or of such descriptions, as are inconsistent with these, or with the maintenance of the authority of the laws, I have thought proper, in pursuance of the authorities specially given by law, to issue this my Proclamation, hereby requiring all armed vessels bearing commissions under the Government of Great Britain, now within the harbors or waters of the United States, immediately and without any delay to depart from the same, and interdicting the entrance of all the said harbors and waters to the said armed vessels, and to all others bearing commissions under the authority of the British Government.

And if the said vessels, or any of them, shall fail to depart as aforesaid, or if they or any others, so interdicted, shall hereafter enter the harbors or waters aforesaid, I do in that case forbid all intercourse with them, or any of them, their officers or crews, and do prohibit all supplies and aid from being furnished to them or any of them.

And I do declare, and make known, that if any per-

son from or within the jurisdictional limits of the United States, shall afford any aid to any such vessel, contrary to the prohibition contained in this Proclamation, either in repairing any such vessel, or in furnishing her, her officers or crew, with supplies of any kind, or in any manner whatsoever, or if any pilot shall assist in navigating any of the said armed vessels, unless it be for the purpose of carrying them, in the first instance, beyond the limits and jurisdiction of the United States, or unless it be in the case of a vessel forced by distress, or charged with public despatches as hereinafter provided for, such person or persons shall, on conviction, suffer all the pains and penalties by the laws provided for such offences.

And I do hereby enjoin and require all persons bearing office, civil or military, within or under the authority of the United States, and all others, citizens or inhabitants thereof, or being within the same, with vigilance and promptitude to exert their respective authorities, and to be aiding and assisting to the carrying this Proclamation, and every part thereof, into full effect.

Provided, nevertheless, that if any such vessel shall be forced into the harbors or waters of the United States, by distress, by the dangers of the sea, or by the pursuit of an enemy, or shall enter them charged with despatches or business from their Government, or shall be a public packet for the conveyance of letters and despatches, the commanding officer immediately reporting his vessel to the collector of the district, stating the object or cause of entering the said harbors or waters, and conforming himself to the regulations in that case prescribed under the authority of the laws, shall be allowed the benefit of such regulations respecting repairs, supplies, stay, intercourse, and departure, as shall be permitted under the same authority.

In testimony whereof, I have caused the seal of the United States to be affixed to these presents, and signed the same.

Given at the City of Washington the second day of July, in the year of our Lord one thousand eight hundred and seven, and of the sovereignty and independence of the United States the thirty-first.

TH. JEFFERSON.

By the President: JAMES MADISON,
Secretary of State.

The Message was read, and, together with the Proclamation, ordered to lie on the table.

MARYLAND CONTESTED ELECTION.

The order of the day being called on the report of the Committee of Elections on the contested election of Mr. McCreery,

Mr. MILNOR moved that the Committee of the Whole be discharged from the further consideration of the report, with a view to its recommitment to the Committee of Elections. Messrs. MILNOR, SMILIE, SOUTHARD, VAN HORNE, TROUP, ALEXANDER, and J. MONTGOMERY, expressed themselves in favor of a recommitment, and Messrs. COOK, RHEA, and ALSTON against it; when the question on discharging the Committee of the Whole from the further consideration of the report was taken, and carried, 77 members rising in its favor.

Mr. MILNOR then moved a recommitment to the Committee of Elections, which was opposed by Mr. D. R. WILLIAMS; to whom Messrs. MILNOR and SOUTHARD replied.

The question on recommitment was taken and carried, 70 being in favor of it.

POTOMAC BRIDGE.

Mr. LEWIS moved for the order of the day on the bill for the erection of a bridge over the river Potomac.

The House went into a Committee of the Whole on the subject, 65 being in favor of it; and the motion to strike out the first section being still before the Committee, Messrs. NELSON, SLOAN, and KEY spoke in favor of the motion, and Mr. LEWIS opposed it: when the question was taken on striking out the first section, and negatived, 78 to 41.

The bill was then nearly all read over by sections, and the blanks filled; when, the hour of adjournment being arrived, the Committee rose, reported progress, and obtained leave to sit again.

FRIDAY, November 20.

On motion of Mr. PARKE,

Resolved, That a committee be appointed to inquire into the expediency of amending the ordinance for the government of the Northwestern Territory, passed the thirteenth of July, one thousand seven hundred and eighty-seven, so far as relates to the duties of the supreme or superior Judges of the Indiana Territory; and that they have leave to report by bill, or otherwise.

Ordered, That Mr. GRAY, Mr. STEDMAN, Mr. MARMADUKE WILLIAMS, Mr. PARKE, and Mr. BARD, be appointed a committee pursuant to the said resolution.

Mr. EPPES presented a memorial of sundry citizens of the first and second wards of the city of Washington, in the Territory of Columbia, stating that the manner of electing the City Council by a general ticket, as authorized by the act of incorporation, passed the twenty-eighth of February, one thousand eight hundred and four, is found by experience to be injurious to the interests of the memorialists, and praying that such alterations may be made in the said act of incorporation as may effectually secure the just rights of the citizens, and promote the general prosperity of the city.—Referred to Mr. EPPES, Mr. PITKIN, Mr. VAN RENSSELAER, Mr. HOGE, and Mr. BIBB, with leave to report thereon by bill, or otherwise.

The House again resolved itself into a Committee of the whole on the bill authorizing the erection of a bridge over the river Potomac, within the District of Columbia. The bill was reported with several amendments thereto; which were twice read and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time on Monday next.

The House resolved itself into a Committee of the Whole on the bill allowing an additional compensation to the Secretaries of the Mississippi, Indiana, Louisiana, and Michigan Territories. The bill was reported with an amendment thereto; which was twice read and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time on Monday next.

ADJOURNMENT.

Mr. D. R. Williams moved that when the House adjourned it should adjourn till Monday.

Mr. Blackledge had only one objection to agreeing to the motion; and that was, that they were in momentary expectation of despatches, which possibly might require them to convene within one hour after they were received. He thought the House should meet to-morrow for the purpose of receiving communications, should there be any to make; if there were none, they might adjourn in ten minutes if the gentleman chose.

Mr. Cook hoped the House would adjourn till Monday, to give time to the committees to meet.

Mr. Crowninshield said he believed it was understood that despatches had arrived at New York from London; and he thought it of great importance, at this crisis, that the nation should be informed of the state of affairs, and how the negotiation had progressed. Mr. C. said he had just heard that the ship had arrived in which Mr. Monroe was to have taken his passage, and that she left England on the first of October. He thought the House should not adjourn for two days together at this time, when the nation was, he feared, on the eve of war. Besides, if the House did meet, and there were no despatches laid before them, they might adjourn immediately.

The motion for adjournment till Monday was lost, 66 to 43.

Saturday, November 21.

On motion of Mr. Crowninshield,

Resolved, That the Clerk of this House furnish the standing committees of this House, and also the Committee on Post Offices and Post Roads, with such maps as may be required by committees, respectively.

On motion of Mr. Newton,

Ordered, That each of the standing committhes be furnished by the Clerk of the House with a copy of Graydon's Digest of the Laws of the United States.

Mr. Clopton, from the Committee of Revisal and Unfinished Business, to whom it was referred to examine the Journal of the last session, and report therefrom such matters of business as were then depending and undetermined, made a further report, in part; which was read, and ordered to lie on the table.

SIR JAMES JAY.

Mr. Jones moved that the House should, according to the order of the day, go into Committee of the Whole on the report in favor of the petition of Sir James Jay. Agreed to, 18 to 29. The report being read with the letter from the Secretary of State accompanying it,

Mr. Taylor opposed and Mr. Jones supported it.

The question being taken on concurrence with the report, the votes were, in favor of it 45, against it 46; there appearing some doubt whether this decision was correct, a second count was about to be had, when a debate took place, in which Messrs. Upham, Cook, Dana, Quincy, Sloan, and Blackledge, supported, and Messrs. J. Clay, Gardenier, D. R. Williams, Holland, Taylor, and Burwell, opposed the report.

In support of the report it was urged that the secret mode of correspondence, for which the petioner prays a compensation, was very useful in the Revolutionary War, and no doubt might be again; that the testimony in favor of the invention was very satisfactory; that there was on file in the office of the Secretary of State, a letter written by General Washington in this invisible ink; that Mr. Jay had never received compensation; that although it had been used by various persons, none had ever yet known the composition of it but himself; that the report was only to authorize the President to purchase this secret if he thought fit, leaving him the judge of its utility.

Those who opposed the report, argued that it was absurd to vote away money for a thing they did not and could not understand; that there never yet was a secret ink made but a composition could be invented that would bring it out, and that possibly Sir James himself might know such a composition; that the House had no security before them that it was not or would not be disclosed to other Governments as well as this; that if secret correspondence was wanted, it had from late occurrences appeared that Entick's Dictionary and a key word would afford, by writing in cipher, sufficient secrecy.

In the course of this debate much wit was displayed in speaking on different modes of keeping secrets, and the futility of all; with allusions to the secret proceedings of Congress, particularly those which took place on the 19th instant, which were said to have been known before the House took them up. Some amusement also arose amongst the members from the difficulty of hearing each other, and the consequent mistakes that took place.

The question on concurrence being taken was carried, 50 to 48.

The Committee rose and reported to the House their agreement to the resolution contained therein; which was read, as follows:

Resolved, That it shall be lawful for the President of the United States to obtain, by purchase, at a reasonable price, the exclusive right, on behalf of the public, of the system invented by Sir James Jay, as submitted by him to the Executive Department of Government: provided, in the opinion of the President, it will be of public utility and importance to possess the same.

The House proceeded to consider the said resolution; and, on the question that the House do concur with the Committee of the whole House in their agreement to the same, Messrs. J. Clay and Southard opposed, and Messrs. Sloan, Quincy, Newton, Blackledge, and Crowninshield, supported it. The question was then taken, and decided in the affirmative—yeas 54, nays 53, as follows:

YEAS—Evan Alexander, Ezekiel Bacon, Joseph Barker, William Blackledge, John Blake, jr., Peter Carlton, Epaphroditus Champion, John Chandler, Orchard Cook, Jacob Crowninshield, Richard Cutts, Samuel W. Dana, John Davenport, jr., Josiah Deane, Daniel M. Durell, William Ely, James Fisk, Francis Gardner, Isaiah L. Green, John Harris, John Heister, Daniel Ilsley, Richard M. Johnson, Walter Jones, Wm. Kirkpatrick, Nehemiah Knight, Joseph Lewis, junior, Matthew Lyon, Josiah Masters, William McCreery, Jeremiah Morrow, Jonathan O. Mosely, Gurdon S. Mumford, Thomas Newbold, Thomas Newton, Timothy Pitkin, jr., Josiah Quincy, Samuel Riker, John Rowan, John Russell, Ebenezer Seaver, James Sloan, Dennis Smelt, William Stedman, Samuel Taggart, Benjamin Tallmadge, David Thomas, Jabez Upham, James I. Van Allen, Philip Van Cortlandt, Killian K. Van Rensselaer, Daniel C. Verplanck, Isaac Willbour, and Richard Winn.

NAYS—Lemuel J. Alston, Willis Alston, jr., David Bard, Burwell Bassett, Thomas Blount, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, George W. Campbell, Joseph Clay, John Clopton, John Culpepper, Ezra Darby, Joseph Desha, James Elliot, Meshack Franklin, Barent Gardenier, Peterson Goodwyn, Edwin Gray, William Helms, William Hoge, James Holland, Benjamin Howard, Reuben Humphreys, Robert Jenkins Thomas Kenan, John Lambert, Robert Marion, William Milnor, Daniel Montgomery, junior, John Morrow, John Porter, John Pugh, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Matthias Richards, Lemuel Sawyer, John Smilie, Jedediah K. Smith, Samuel Smith, John Smith, Henry Southard, Richard Stanford, Clement Storer, John Taylor, John Thompson, Abram Trigg, Archibald Van Horne, Jesse Wharton, Robert Whitehill, and David R. Williams.

Ordered, That a bill, or bills, be brought in, pursuant to the said resolution; and that Messrs. JONES, STANFORD, VAN ALLEN, UPHAM, and HEISTER, do prepare and bring in the same.

MONDAY, November 23.

Mr. ELLIOT, from the committee appointed on the sixteenth instant, presented a bill extending jurisdiction, in certain cases, to Territorial Courts, and for other purposes; which was read twice, and committed to a Committee of the Whole on Thursday next.

On motion of Mr. JEREMIAH MORROW,

Resolved, That the committee appointed, on the fifth instant, "to inquire what compensation should be allowed for issuing commissions giving authority to take testimony, or examinations relative to claims or applications, under the act to provide for persons who were disabled by known wounds received in the Revolutionary war," be instructed to inquire whether provision ought not to be made by law for placing on the pension list of the United States, persons who have received wounds in the service subsequent to the Revolutionary war, and who were called into service under any of the several acts of Congress, providing for the protection of the frontiers; such persons having served in the militia, in a volunteer corps, or in the regular forces, or under a special engagement; and that they report by bill, or otherwise.

A Message was received from the President of the United States, transmitting a copy of the proceedings, and of the evidence exhibited on the arraignment of Aaron Burr, and others, before the Circuit Court of the United States, held in Virginia, in the course of the present year.—Referred to the committee appointed on so much of the Message of the President of the United States, of the twenty-seventh ultimo, as relates to enterprises against the public peace, and to the means of preventing the same, and punishing the authors.

POTOMAC BRIDGE.

The engrossed bill for the erection of a bridge over the river Potomac, was about to be read for the third time, when Mr. NELSON moved that it be recommitted to a select committee for the purpose of amendment.

On this motion a debate ensued, in which the motion was supported by Messrs. NELSON, SLOAN, SMILIE, KEY, CROWNINSHIELD, DESHA, BACON, and TALLMADGE, and opposed by Messrs. LEWIS and GARDENIER.

The reasons given in favor of recommitment, were, that the corporation was made perpetual; that there ought to be some provision allowing the United States to become purchasers if they chose, after a certain length of time, in order to make it a free bridge; that there was in the bill no provision making the shares of a stockholder amenable to process of law; that a man might consequently vest all his property in this stock, in order to defraud his creditors; and that there was in the bill no provision for clearing the channel of the river, in case it should be injured by the bridge being carried away by ice, storms, &c. or should be left unfinished.

Those who opposed the motion expressed their regret that these amendments had not been thought of when the bill was before the Committee of the Whole, and open for amendment; that this was done with a design to defeat the principle of the bill, and that the advocates of the motion might be compared to physicians who administered their nostrums to an infant till they strangled it; in answer to the first objection it was replied that the risk which the subscribers would run in the experiment entitled them to ample remuneration, and yet whenever the annual income exceeded fifteen per centum on their capital, Congress was authorized to lower the tolls; to the second objection it was answered that every moneyed institution was liable to the same objection; that creditors were authorized to seize upon tolls arising from the stock of individuals, and to sequestrate them till they received their dues; and to the third objection it was said that these events were within the bare compass of possibility, and might never happen.

The motion for recommitment to a select committee was carried—yeas 72; and the same committee appointed that brought in the bill.

Mr. THOMAS said, that by an act passed in 1798, the Secretary of War, the Secretary of the Trea-

sury, and the Comptroller of the Treasury, were appointed Commissioners to examine the claims of refugees from the British Provinces of Canada and Nova Scotia. These Commissioners had made two reports on those claims, which had not yet been finally acted on. At the last session they were referred to a select committee, who reported a bill which passed this House, but was postponed in the Senate. He now moved that they be referred to a select committee. Agreed—yeas 55, nays 23, and the following gentlemen appointed the committee: Messrs. THOMAS, BIBB, and BACON.

On motion of Mr. POINDEXTER, the House went into a Committee of the Whole on the bill to extend the right of suffrage in the Mississippi Territory, and for other purposes.

Mr. TROUP moved to strike out the first section of the bill, extending the right of suffrage, as well on the ground of its being incompatible with the articles of cession and agreement between the United States and Georgia as on its inexpediency.

The motion was supported by Messrs. TROUP and BIBB, and opposed by Messrs. POINDEXTER, W. ALSTON, RHEA of Tennessee, and SLOAN, who contended that there was no doubt of the right of Congress to legislate on this subject or of its expediency.

The Committee rose, without coming to a decision, and obtained leave to sit again.

TUESDAY, November 24.

Mr. NEWTON, from the Committee of Commerce and Manufactures, to whom was referred, on the eleventh instant, the memorial of Jeremiah Hill, reported a bill to change the name of the District of Biddeford and Pepperelborough, in Massachusetts, to that of Saco and Biddeford; which was read twice, and committed to a Committee of the Whole on Thursday next.

The House resolved itself into a Committee of the Whole on the bill authorizing the purchase of certain copies of the Journals of Congress. The bill was reported with several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time tomorrow.

The House again resolved itself into a Committee of the Whole on the bill to incorporate the Trustees of the Baptist Church in the City of Washington. The bill was reported with an amendment thereto; which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time tomorrow.

BRITISH AGGRESSIONS.

Mr. BLOUNT, from the committee appointed on so much of the Message of the President of the United States as relates to aggressions committed within our ports and waters by foreign armed vessels; to violations of our jurisdiction; and to measures necessary for the protection of our ports and harbors; presented to the House a letter from the Secretary of the Navy, stating that, in a letter addressed by him, on the twelfth instant, to the chairman of the said committee, some erroneous information had been given, and an omission made, which he had since discovered, and thought it his duty now to correct. The said letter was read, and ordered to lie on the table.

Mr. BLOUNT, from the committee to whom was referred so much of the Message of the President of the United States as relates to aggressions, &c., reported further, in part,

"That the numerous aggressions and violations of our jurisdiction recently committed within our ports and waters by British ships of war, whether they are to be regarded as the effects of positive orders from the British Government, or as proceeding from that unrestrained insolence and rapacity in British naval commanders which previously produced the murder of our fellow-citizen, Pierce, and the perpetration of many other well remembered outrageous and irritating acts, are convincing proofs of the necessity of placing our ports and harbors, as speedily as possible, in a situation to protect from insult and injury the persons and property of our citizens living in our seaport towns, or sailing in our own waters, and to preserve therein the respect due to the constituted authorities of the nation.

"That the committee, having maturely considered the subject, are of opinion that the protection desired can be best and most expeditiously afforded by means of land batteries and gunboats, as they have been induced to believe that by a judicious combination and use of these two powers, effectual protection can be given, even to our most important seaport towns, against ships of any size unaccompanied by an army.

"That our most important ports and harbors, and those requiring the earliest attention and the most expensive fortifications, are, New Orleans, Savannah, Charleston, S. C., Wilmington, N. C., Norfolk, Baltimore, Philadelphia, New York, New London, Newport, R. I., Boston, Salem, Newburyport, Portsmouth, N. H., and Portland.

"And that the ports, harbors, and places of minor importance requiring protection, and which may be protected by less expensive works, are, St. Mary's, Ga., Beaufort and Georgetown, S. C., Ocracoke, Albemarle Sound, James river, York, and Rappahannock rivers, Potomac, Patuxent, Annapolis, and Eastern Shore, Md., Delaware Bay and river, Egg Harbor, N. J., Amboy, Long Island, Connecticut shore, Tiverton, R. I., New Bedford, Marblehead, and Cape Ann, York, Kennebunk, and Saco, Kennebeck, Sheepscut, Damarescotta, Broad Bay, and St. Georges, Penobscot, Frenchman's Bay, and Passamaquoddy Bay.

"Wherefore, your committee holding themselves bound, by the tenor of the resolution referred to them, to report hereafter their opinion of the expediency of interdicting the waters of the United States to foreign armed vessels, according as circumstances, now unknown, may, when known, seem to require, submit the following resolutions, viz:

"*Resolved*, That it is expedient to authorize the President of the United States to cause such fortifications to be erected as, in addition to those heretofore built, will, with the assistance of gunboats, afford effectual protection to our ports and harbors, and preserve therein the respect due to the constituted authorities of the nation; and that there be, and hereby is, appropriated for that purpose, out of any moneys in the

Treasury not otherwise appropriated, the sum of —— dollars,

"*Resolved*, That it is expedient to authorize the President of the United States to cause to be built an additional number of gunboats not exceeding ——, and to arm, equip, man, fit, and employ the same for the protection of our ports and harbors; and that there be, and hereby is, appropriated for that purpose, out of any moneys in the Treasury, not otherwise appropriated, the sum of ——."

The report was referred to a Committee of the Whole on Thursday.

WEDNESDAY, November 25.

Mr. POINDEXTER presented a memorial of the Mayor, Aldermen, and Assistants, of the city of Natchez, in the Mississippi Territory, praying a grant, in fee simple, of two lots of lands, within the limits of the said city, for the purpose of erecting public buildings thereon.—Referred to the Committee on the Public Lands.

An engrossed bill authorizing the purchase of certain copies of the Journals of Congress was read the third time, and passed.

An engrossed bill to incorporate the Trustees of the Baptist Church, in the City of Washington, was read the third time, and passed—63 to 25.

ARMY OF THE UNITED STATES.

Mr. TALLMADGE offered the following resolutions, which were read:

Resolved, That the Secretary for the Department of War be directed to lay before this House a statement of the respective numbers of officers, non-commissioned officers, and soldiers, composing the Army of the United States, noting the numbers wanting to complete the present Establishment.

Resolved, That the Secretary for the Department of War be directed to lay before this House a statement of the respective numbers of volunteers, either of artillery, cavalry, or infantry, whose services have been offered and accepted, in pursuance of the act, entitled "An act authorizing the President of the United States to accept the service of a number of volunteer companies, not exceeding 30,000 men."

Mr. TALLMADGE said that it would be remembered, when the President had transmitted his Message to Congress, at the opening of the session, one part of it related to what might be the probable situation of the country, and to the necessity that might exist for raising a regular Army. Mr. T. presumed that every gentleman on the floor felt the same sentiment with respect to the importance of the preservation of the honor of the country; and in order that they might be prepared to meet any possible event, it became essentially necessary to know what was our actual force. This was the object of the first resolution which he had proposed. He wished to know not only what that force was, but how far it was deficient. Another reason which operated strongly on his mind, was, that the House never failed, at each session, to vote money for the support of the Army and Navy of the United States. They certainly could not make the exact appropriations required, without knowing what the actual force of the Army was.

With respect to the second resolution, it would be remembered that an act was passed in February, 1807, authorizing the President to accept of the services of any number of volunteers, not exceeding 30,000, which act was to remain in force for two years. It became important to know how far volunteer companies had offered, and how far this force might be brought into the field in case of emergency. An act had also passed in April, 1806, authorizing the President to call out 100,000 militia, to continue in force two years from its date, and would of course expire next April. These were the different species of force on which the President could calculate on an emergency. That the House might know the exact force of the Union, and how far it might be relied on, were the reasons which induced him to move these resolutions at this time.

A desultory conversation took place as to the ability of the Executive to give the information called for in the second resolution, in which Messrs. TALLMADGE, THOMAS, DANA, QUINCY, CHANDLER, DURELL, ALSTON, UPHAM, and SMILIE, took part; when, the resolutions were agreed to, without a division.

MISSISSIPPI TERRITORY.

On motion of Mr. POINDEXTER, the House went into a Committee of the Whole on the bill to extend the right of suffrage in the Mississippi Territory, and for other purposes.

Mr. TROUP withdrew his motion for striking out the first section of the bill, with a view to give the gentleman from the Mississippi Territory an opportunity of making the bill less objectionable, and for that reason solely.

Mr. POINDEXTER, to accord with the wishes of the representation from Georgia, moved an amendment, which limited the right of suffrage to freeholders and holders of land by equitable titles; which was agreed to, without a division.

Mr. BIBB moved that the following provision be inserted in the bill:

"*Provided*, That this act shall not take effect till the assent of the State of Georgia shall have been signified thereto;"

Which motion was negatived—68 to 18.

The bill being gone through, the Committee rose and reported it, with the following amendment:

"SEC. 2. After the words, '*in Congress assembled*,' in the second line of the bill, strike out the words, 'That every free white male person in the Mississippi Territory, above the age of twenty-one years, having been a citizen of the United States, and resident in the said Territory one year next preceding an election of Representatives, and having paid a county or territorial tax, assessed at least six months previous to such election, shall be entitled to vote for Representatives to the General Assembly of said Territory;' and insert the following words, to wit: 'That every free white male person in the Mississippi Territory, above the age of twenty-one years, having been a citizen of one of the United States, and resident in the said Territory one year next preceding an election of Representatives, and who is possessed, in his own right, of a freehold estate, in fifty acres of land, or who is entitled to a right of pre-emp-

tion to a tract of land in said Territory, by virtue of any law of Congress, or who may become the purchaser from the United States of any tract of land of the quantity of fifty acres, shall be entitled to vote for a Representative to the General Assembly of said Territory.'"

Mr. BIBB wished the proviso he had moved, in Committee of the Whole, to be now added to the bill.

The SPEAKER said the House must decide upon the amendment made in Committee.

Mr. POINDEXTER said, that, as the gentleman from Georgia (Mr. BIBB) had declared an intention to oppose the bill *in toto*, if his proviso were not agreed to, he should now be opposed to the amendment which he himself had proposed, and which had been adopted in Committee, as it had been offered with a sole view to the accommodation of the gentleman from Georgia; and as, even after this compromise, they were still determined to oppose the bill. He therefore wished it now to be decided on in its original shape, which was most agreeable to his constituents.

The question being taken by yeas and nays, on concurrence with the amendment of the Committee of the Whole, it was decided in the negative—yeas 41, nays 79, as follows:

YEAS—David Bard, Burwell Bassett, Wm. W. Bibb, William Blackledge, John Blake, junior, Robert Brown, Joseph Calhoun, Joseph Clay, Matthew Clay, Howell Cobb, William Ely, John W. Eppes, Meshack Franklin, Barent Gardenier, Francis Gardner, James M. Garnett, Peterson Goodwyn, Edwin Gray, David Holmes, Thomas Kenan, William Kirkpatrick, Joseph Lewis, junior, Robert Marion, Josiah Masters, Thomas Moore, Jeremiah Morrow, Thomas Newbold, Thomas Newton, Wilson C. Nicholas, Timothy Pitkin, junior, Samuel Riker, Dennis Smelt, Richard Stanford, William Stedman, Lewis B. Sturges, Samuel Taggart, Abram Trigg, Jabez Upham, Robert Whitehill, Alexander Wilson, and Richard Winn.

NAYS—Willis Alston, junior, Ezekiel Bacon, Joseph Barker, Thomas Blount, John Boyle, William Butler, George W. Campbell, Peter Carlton, Epaphroditus Champion, John Chandler, Martin Chittenden, Orchard Cook, Jacob Crowninshield, John Culpepper, Richard Cutts, Ezra Darby, John Davenport, junior, Josiah Deane, Joseph Desha, Daniel M. Durell, James Elliot, William Findley, James Fisk, Isaiah L. Green, John Harris, John Heister, William Helms, William Hoge, James Holland, Benjamin Howard, Daniel Ilsley, Robert Jenkins, James Kelly, Philip B. Key, Nehemiah Knight, John Lambert, Edward Lloyd, Matthew Lyon, William Milnor, Daniel Montgomery, jun., John Montgomery, Nicholas R. Moore, John Morrow, Jonathan O. Mosely, Gurdon S. Mumford, Roger Nelson, John Porter, John Pugh, Josiah Quincy, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Matthias Richards, John Rowan, John Russell, Lemuel Sawyer, Ebenezer Seaver, James Sloan, John Smilie, Jedediah K. Smith, Samuel Smith, John Smith, Henry Southard, Clement Storer, Peter Swart, Benjamin Tallmadge, John Taylor, David Thomas, John Thompson, Geo. M. Troup, James I. Van Allen, Archibald Van Horne, Killian K. Van Rensselaer, Jesse Wharton, Isaac Wilbour, David R. Williams, Marmaduke Williams, and James Witherall.

On each of the foregoing questions some debate arose, in which Messrs. POINDEXTER, QUINCY, BACON, SLOAN, SMILIE, COOK, RHEA of Tennessee, LYON, and HOLLAND, generally supported the right of Congress to legislate on the subject without the consent of Georgia, and advocated the political expediency of extending the right of suffrage as originally contemplated by the bill, so that every free white male inhabitant, who had paid taxes six months, and been a resident in the Territory twelve months previous to the election, should be entitled to vote for Representatives in the Legislature.

Messrs. BIBB, TROUP, GARDENIER, GARDNER, and ROWAN, generally denied the right of Congress to legislate on the subject in violation of the compact entered into with Georgia at the time of her cession to the territory; intimated that the Territory would soon become a State, when she could fix the qualifications of her own voters; and added, that, in the mean time, there was abundant evidence of her elections being properly conducted, from the talents and respectability of her Representatives.

The House adjourned without taking a question on Mr. BIBB's proviso.

THURSDAY, November 26.

Mr. LEWIS, from the committee to whom was recommitted the bill for erecting a bridge over the river Potomac, reported the bill with amendments; the most material of which makes the shares of the stock personal instead of real property, and gives to the United States the right of becoming purchasers of the bridge after a certain time. The bill was referred to a Committee of the Whole to-morrow.

Mr. LLOYD presented a petition of David Porter, master commandant in the Navy of the United States, which was received and read, stating that the petitioner hath imported from Italy, in the frigate Constitution, lately arrived at Boston, on account of the officers of the Navy, a monument, to be erected in the City of Washington, in memory of the officers who fell during the different attacks made on the city of Tripoli, in the year one thousand eight hundred and four; and praying a remission of the duty accruing to the United States on the importation of the same.—Referred to the Committee of Ways and Means.

MISSISSIPPI TERRITORY.

On motion of Mr. POINDEXTER, the House resumed the consideration of the bill extending the right of suffrage in the Mississippi Territory, and for other purposes: Whereupon, a motion was made by Mr. BIBB, to amend the said bill by adding to the end thereof, a proviso in the words following, to wit: *Provided*, That this act shall not take effect until the assent of the Legislature of Georgia shall have been signified thereto.

Messrs. BIBB, GARDENIER, TAYLOR, and J. CLAY, supported the proviso; and Messrs. POINDEXTER, M. WILLIAMS, SLOAN, KEY, SMILIE, BACON, LYON, RHEA, CULPEPPER, MILNOR, and JOHNSON, opposed it.

The question was taken that the House do

agree to the same; and passed in the negative—yeas 35, nays 86, as follows:

YEAS—David Bard, Burwell Bassett, William W. Bibb, Thomas Blount, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, Joseph Clay, Matthew Clay, Howell Cobb, James M. Garnett, Peterson Goodwyn, Edwin Gray, Walter Jones, Robert Marion, Josiah Masters, Daniel Montgomery, jr., Thomas Moore, Jeremiah Morrow, Thomas Newton, Wilson C. Nicholas, John Pugh, John Rowan, Dennis Smelt, Richard Stanford, John Taylor, Abram Trigg, George M. Troup, Philip Van Cortlandt, Robert Whitehill, Isaac Wilbour, David R. Williams, Alexander Wilson, and Richard Winn.

NAYS—Evan Alexander, Lemuel J. Alston, Willis Alston, jr., Ezekiel Bacon, Joseph Barker, William Blackledge, John Boyle, George W. Campbell, Peter Carlton, Epaphroditus Champion, John Chandler, Martin Chittenden, Orchard Cook, Jacob Crowninshield, John Culpepper, Richard Cutts, Samuel W. Dana, Ezra Darby, John Davenport, jr., Josiah Deane, Joseph Desha, Daniel M. Durell, James Elliot, William Ely, John W. Eppes, William Findley, James Fisk, Meshack Franklin, Barent Gardenier, Francis Gardner, Isaiah L. Green, John Harris, John Heister, William Helms, William Hoge, James Holland, David Holmes, Benjamin Howard, Daniel Ilsley, Robert Jenkins, Richard M. Johnson, James Kelly, Thomas Kenan, Philip B. Key, William Kirkpatrick, Nehemiah Knight, John Lambert, Edward Lloyd, Matthew Lyon, William Milnor, John Montgomery, Nicholas R. Moore, John Morrow, Jonathan O. Mosely, Gurdon S. Mumford, Roger Nelson, Timothy Pitkin, jr., John Porter, Josiah Quincy, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Matthias Richards, Samuel Riker, John Russell, Lemuel Sawyer, Ebenezer Seaver, James Sloan, John Smilie, Jedediah K. Smith, Samuel Smith, John Smith, Henry Southard, William Stedman, Clement Storer, Lewis B. Sturges, Peter Swart, Benjamin Tallmadge, John Thompson, Jabez Upham, James I. Van Allen, Archibald Van Horne, Killian K. Van Rensselaer, Jesse Wharton, Marmaduke Williams, James Witherell.

Ordered, That the said bill be engrossed, and read the third time to-morrow.

FRIDAY November 27.

Mr. SPEAKER laid before the House sundry papers and documents, transmitted by DUNCAN McFARLAND, of the State of North Carolina, relative to his claim to a seat in this House, as a representative for the said State; which were read and referred to the Committee of Elections.

Mr. RANDOLPH, from the committee appointed, of the eleventh instant, presented, a bill to explain the act, entitled "An act to prohibit the importation of slaves into any port or place within the jurisdiction of the United States, from and after the first day of January, in the year of our Lord one thousand eight hundred and eight;" which was read twice and committed to a Committee of the Whole on Monday next.

PHILADELPHIA MEMORIAL.

Mr. JOSEPH CLAY presented a memorial of sundry merchants and traders of the city of Philadelphia, in the State of Pennsylvania, praying a repeal of an act of Congress, passed on the eighteenth day of April, one thousand eight hundred and six, entitled "An act to prohibit the importation of goods, wares, and merchandise."

The memorial is as follows:

To the President, Senate, and House of Representatives of the United States of America:

The memorial of the merchants and traders of the city of Philadelphia respectfully represents: That a strong confidence in the neutral position and character of their country, and in the pacific policy of its Government, has encouraged and induced many of your memorialists to embark their property extensively in foreign commerce, and to adventure a large proportion of their wealth upon distant voyages—that recent and unexpected events so far affect the security of their enterprises as to impel them to make known their sentiments and wishes to Congress.

Your memorialists cannot but view with extreme solicitude the apparent state of the negotiation between their country and Great Britain, upon the event of which the safety of their property so materially depends. Their alarm and anxiety, increased by reports, perhaps unfounded, of the nature and extent of the demands made by the Government of the United States, cannot but be great, while they are wholly destitute of information, from official sources, calculated to direct their conduct. They mean not, however, to intimate a wish for disclosures incompatible with the due reserve of Government, but, candidly to present to its view their difficulties and embarrassments.

In common with their fellow-citizens, your memorialists entertain the strongest sense of the necessity of supporting the honor and independence of their country. They feel that the national interest is inseparably connected with such support, and, although in the event of war, as individuals they must be deeply affected, they have not a wish that considerations of private interest should induce a sacrifice of national honor and independence.

But, from the wisdom and patriotism of the National Legislature, they conceive the expectation well founded that the commercial interests of the United States, with which the common welfare is inseparably connected, will not be committed by an unyielding adherence to doubtful or unsettled principles. They, therefore, with confidence submit their hopes that while essential rights—to which, as an independent nation, we are indisputably entitled—will be maintained to the last extremity, matters of seeming interest, but of less importance, will be referred to a more propitious and less hazardous moment for adjustment.

Under these impressions, your memorialists deem it an indispensable duty to themselves, and to their fellow-citizens of the landed and other interests, most respectfully to suggest to Congress that the act, at present in suspension, entitled "An act to prohibit the importation of certain goods, wares, and merchandise," passed the 18th day of April, 1806, should it go into operation, will not tend to promote the desirable results of national reparation, and amicable adjustment of our differences with Great Britain. In effect, that your memorialists consider the said act, in its application to this country, as extremely embarrassing, and, in its operation on the Government and people of Great Britain, as irritating and inefficient; that the repeal of the said act would be productive of beneficial effects, inasmuch as it would relieve our own citizens from embarrassment, demonstrate a disposition to treat on terms of liberality, and be considered as a pledge of candor and

magnanimity in the conduct of the negotiation; while, in the event of failure to produce a fair and honorable accommodation, the evils of war, which must severely and equally affect the farmer, merchant, and mechanic, would be borne with less regret, as being rendered inevitable.

In submitting their opinions to the National Legislature, your memorialists have not, they conceive, overlooked the delicacy of the subject to which they relate, and they have anxiously endeavored, in representing the objects of this memorial, to connect the national honor and interest with their individual claims and privileges.

Relying on the exercise of a wise, just, and dignified policy, your memorialists respectfully refer the matters herein stated to the consideration and decision of Congress.

The memorial having been read, Mr. J. CLAY moved that it be referred to the Committee of Commerce and Manufactures.

Mr. ROWAN did not feel himself competent to judge on this subject, but would barely suggest to the consideration of the House, whether, after the attack on the Chesapeake, a petition of this nature should be referred. He himself had disapproved of the act of which this petition prayed a repeal, but it had been passed, and since its passage, the memorable affair of the Chesapeake had taken place; and it had been said by the British Government that, if this act were suffered to go into operation, it would be considered as a declaration of war. Under these circumstances, he could not, as an American, vote for a reference of a memorial on this subject. Had he been entitled to a vote previous to the affair of the Chesapeake, he should have voted for a repeal of the law. But now, he was opposed to considering the subject at all. They were not now in a situation to parley. And he hoped, whatever might hereafter be done, that the House would not now enter into a consideration of this subject. In rising to express this opinion, he was actuated by the same sentiments that would guide him in common life. If he had committed an injury, on fair words, he would retract it; but, if a threat were used, he would not. This law had caused a sensation in the Cabinet of England, and, whatever might be the consequence, they must now make a proper stand. Even a reference of this memorial now, would be a degradation of their dignity.

Mr. J. CLAY said that, whatever were his sentiments as to the propriety of the measure in question, yet, as the memorial was couched in moderate terms, and drawn up with ability, he thought it would not be inconsistent with the dignity of Congress to refer it. They did not grant the prayer of the memorial by referring it. It was proposed to be referred to the committee appointed to consider all subjects relating to commerce, and nothing could certainly be more important in relation to commerce than the existence of the act prohibiting the importation of certain goods, wares, and merchandise. He believed that every man in the community who had considered the act in question, had found it deficient in all its details, and perfectly nugatory in some of its provisions. He did not speak of the principle of the act, but of its deficiencies. There was a doubt, under that act, whether a man could import an inkstand or a lock; or, whether he might import a silver watch, though there was no doubt but he could import a gold one; and there were other defects in its provisions, of a like nature. There was such inconsistency, that it might be considered doubtful, even on the ground of expediency, whether it should not be repealed.

Mr. RHEA, of Tennessee, was not one of those who wished for war with any nation on earth, but he should vote against the reference of this petition, or any other that prayed for the same object. It had been said by the gentleman who introduced it, that they did not grant its prayer by referring it. That was true; but, the very reference of it would give color to the supposition that the House were now deliberating whether they should repeal the law or not. It would be reported across the Atlantic, and this very reference might have its effect on the differences subsisting between the two countries. If the United States had taken this ground, why should they now give it up? He would not consent to it. It had also been said that the act was defective and nugatory. If this meant anything, it was, that it needed amendment; and if it were wished to amend it, he was ready to do it by adding other prohibitions to those it already contained. If he recollected right, the memorial stated that the non-importation act bore hard on our own merchants. That might have been expected. They had notice of its going into operation. Why did they, after that, give their orders for those articles which were prohibited by it. If, as had been stated, not an inkstand, or lock, or silver watch, could be imported, the act could be improved or amended without being repealed, as the petitioners wished. It was stated in the memorial that the law was embarrassing to merchants and irritating to Great Britain, and would tend to prevent an arrangement of the existing difficulties. These were ideas which ought to have no weight in favor of their prayer. Let Great Britain be irritated. Did she not irritate other nations? Had she shown any forbearance towards us? It was not necessary for him to recapitulate the oppressions of that nation towards the United States. They were well known to every member of the House. The United States had done everything to secure peace that a nation impressed with a sense of its own dignity ought to do. Should these petitioners be indulged in their wish that the nation should depart from its dignity because they felt some inconvenience? Mr. R. believed, that, when the matter was fully considered, and everything taken into view, it would appear that the United States had offered, in order to an accommodation of these differences, everything which the most liberal policy warranted. If a similar disposition had existed on the part of Britain, they would have been long since settled. Mr. R. concluded by hoping the House would not refer the petition, or give the world an oppor-

tunity to say they were now deliberating about the repeal of such a law.

Mr. CROWNINSHIELD held it to be an incontestable right of the citizens of this country to petition Congress on any subject whatever; but he found, on looking over the memorial, these sentiments; they say that "their alarm and anxiety increased 'by reports, perhaps unfounded, of the nature and 'extent of the demands made by the Government of 'the United States cannot but be great, while they 'are destitute of information from official sources 'calculated to direct their conduct." Nor could Mr. C. himself tell specifically what the Government of the United States had demanded of Great Britain; the President of the United States had informed the House that he would, at a proper time, lay before them such information; they were in expectation of such information, and this memorial asked them, before they had received such information, to repeal the law prohibiting the importation of certain articles. Though there might be some doubt as to some provisions of that law, it should be no inducement for them now to repeal it. Under what circumstances was that act passed? The United States had made remonstrances to Great Britain, on her aggressions for several years, without effect; that act was passed to induce her to do us justice. Had she done it? No; the outrage on the Chesapeake had been since committed. This had been known to her several months, and the Admiral, under whose orders the act was committed, had not been punished. Our Government had done all that remained for it to do, by asking redress of Great Britain. To this no answer had been given. Should the petitioners ask the House, in this situation, to repeal the non-importation act, or even to suspend it for a longer time? Was it grateful to their feelings? He thought not. He would not have objected to the reference of the petition had it not been couched in such terms as those he had quoted; but, as it was, he thought it his duty to object to the reference. The most delicate way of disposing of it would be to let it lie on the table. The suspension of this act expired in the next month; and they would, of necessity, consider the propriety of permitting it to go into operation, or of a further suspension. Mr. C. said, he must confess, for his own part, that he could not flatter himself, from the rumors now afloat, and from what he thought he knew of the disposition of Great Britain, that she would do us justice so far as was required. He thought they were almost at war. From information which he had received, Great Britain was arming or at least intriguing with the Indians on our frontiers. Her vessels were arming on the Lakes; she had called out her militia in Canada and Nova Scotia; and this was done, he presumed, by express orders from the British Government. She had manifested, by her attack on Copenhagen, that she would violate neutral rights without a pretence; she had outraged Denmark, who never injured her, and had not attempted to justify it to the world, but on the mere ground of necessity. He thought Congress ought, at this moment, to arm the nation, and be prepared to meet the event. He could not sit still and hear such language as the petitioners had used; they were alarmed at the extent of our demands. What were they? It was not in the power of the House to say; but, from the known character and conduct of the Executive, they had no right to infer but that they were reasonable and just. He felt a confidence in the Executive, and had no wish prematurely to know what those demands were. These were the ideas which occurred to him at this moment; he could, therefore, see no good which could result from a reference of the petition.

Mr. MILNOR said, that all the arguments of the gentleman from Massachusetts went to show that a reference of the memorial would involve an inquiry into the expediency of repealing the law. If he thought the reference of the petition rested on that question, he should entertain the same opinion as had been expressed by that gentleman; but he had yet heard nothing which could convince him of the impropriety of referring this memorial. It would be no more than a proper respect to the petitioners to give it a reference; as far as he had heard the names of the subscribers to the memorial read, he knew them to be men of consideration; he was not personally acquainted with them, but knew them by character. They had addressed the House in respectful language, and had requested them to consider the propriety of repealing a certain law. What impropriety was there in this? The gentleman from Massachusetts had admitted that it was a question which required consideration, whether the law should go into operation, or be repealed; and, from the observations he had uttered, it appeared to be his desire to enter into more violent measures than those contemplated by that law. Mr. M. had never thought that law judicious, or that a partial prohibition of importation would have a good effect on our foreign relations, but that it would merely tend to irritate; and he would rather have seen a law passed to prohibit all importation, than one of so futile a nature. If the situation of the country was such as to require strong measures, that law would not be such as ought to be adopted. He thought strong measures were required, that they had been sleeping at their posts; that, from the present aspect of our political differences with Great Britain, they should have taken measures for defence, and not have remained so long idle. The memorial had been caused by the uncertain language of the law, as his colleague had informed the House, by which some persons had suffered considerable losses; some had considered it as safe, and some as unsafe, to import certain articles. He hoped the memorial would be referred to a committee, who need not report till the probable issue of events were ascertained. If it were a question whether that law should be repealed or not, as had been admitted by the gentleman from Massachusetts, surely there would be no impropriety in the petition going to that committee whose duty it would be to consider of the propriety of the repeal.

Mr. W. ALSTON said, he thought it at this time

extremely improper to refer the petition, as was proposed. If any step were to be taken in regard to the prayer of the petition, it should be done in Committee of the whole House. If the expediency of repealing the law, alluded to in the petition, was to be considered, it was a plain question, which would present itself to every member of the House, and could be decided without any previous reference to any inferior committee. The petition said something about instructions given to our Ministers. If it were referred to the Committee of Commerce and Manufactures, they might think themselves authorized to call upon the Secretary of State for information; it had therefore better be at once brought before the House, and not go to a committee; for though he felt perfect confidence in that committee, he was not willing at this crisis to entrust them with the power of calling for information which it might not be proper to communicate. In the Committee of the Whole a resolution might be brought forward which would determine the principle at once. He, therefore, moved that it be referred to the Committee of the whole House.

The Speaker said the motion made by Mr. W. Alston would supersede the motion for reference to the Committee of Commerce and Manufactures.

Mr. Bassett amended the motion so as to refer it to a Committee of the Whole on the state of the Union.

Mr. Smilie was sorry this motion was made, for it was certainly giving the memorial more importance than was attached to it by the motion of his colleague, who had introduced it. He considered the matter in a serious point of view. That there was in this country a party in favor of the British Government, he had no doubt; nor did he doubt but that this memorial was intended to embarrass the operations of our Government and strengthen the British Government in their measures. This was his opinion; and if other gentlemen thought so, they would manifest it by their votes.

Mr. Bassett said it would be recollected by the House, that, urged by the same feelings which had actuated the gentleman from Kentucky, (Mr. Rowan,) he had arisen to offer his sentiments on the subject, but had been prevented by the preference given to another gentleman. He considered the subject in a different light from the gentleman last up, and did not view it merely as it affected the petitioners. Their proceedings on this memorial would go forward to the public, and show to the world their opinions on the subject. Should they not now rouse from the slumber into which the gentleman from Pennsylvania had said they had fallen? Should they not show that they would be roused when the occasion called for it? He wished it referred to a Committee of the Whole on the state of the Union, because the nation was particularly interested in it; not to give peculiar consequence to the petition, but because he wished the full sense of the House to be obtained on it. He had prepared a resolution before the gentleman from North Carolina made his motion, declaring that the law ought not to be repealed. He thought this would have been the proper course; but, as the affair now stood, it was his wish to go into a Committee of the Whole instanter; not out of respect to the petitioners, but to the community, who had been long waiting for an expression of their sentiments. What have we said? asked Mr. B. That we will support the Government and its measures? No; we have said nothing. He was for giving to the world their opinion, that, as far as those measures were correct and proper, they would support them in their full extent. This was his reason for wishing it referred to the Committee of the Whole on the state of the Union.

Mr. Chandler said, he could not say whether the subscribers to the petition were American citizens, or British subjects, residing in our cities. If he were to judge from the language and terms which it conveyed, he should strongly suspect that they were of the latter class of people. If he were certain of that, he should wish the petition not to be noticed at all; but, as he was not perfectly convinced of it, he wished it to lie on the table. If it were necessary to take up the subject, they could at any time go into a Committee of the Whole on the state of the Union without the assistance of the petition.

Mr. Southard said, that the language of the petitioners was decent, but their object, the time of their application, and the observations which they had made, he thought extremely improper. The petition contained insinuations that the Executive had taken too high ground, and demanded things that were improper. He, therefore, thought the memorial was not entitled to that countenance from the House, which it would appear to receive by a reference to the Committee of the Whole. He differed in opinion with the gentleman from Virginia, just sat down, who thought this memorial should rouse their feelings; he thought it should stand on its own merits. The subject was in the hands of a committee, who might soon make a report, and they might then display their feelings. When the law in question was passed, he thought some steps were necessary to be taken to convince the British Government that they would not calmly put up with all their injuries, but would resent them. He had believed this law would have that effect, and that Congress ought to pass it; and, having taken this ground, he would not retreat; this was no time for retreating. He would much rather advance. The petitioners had chosen a very unfortunate time for their prayer, when a negotiation was actually pending. What would be the effect of a reference of the memorial? It would strengthen the measures of the British Government; they would suppose that the House repented of its conduct. This would be the effect as respected Great Britain. What would be its effect as respected our own Government? It would, as a necessary consequence, weaken their hands. He was willing to treat the petitioners with respect, as he did not know whether they were British agents or American citizens; but he trusted the motion for refer-

ence to a Committee of the Whole would not prevail, as he could see no one reason for it.

Mr. J. CLAY said, that the petition was signed generally by ship-holders, men of respectability; and, with respect to the insinuation that it was the offspring of a British party, there was signed to that memorial the name of a man, who could no more be supposed a British partisan, than could her greatest enemy; but, he would not now enter into an inquiry as to the character of these men. The gentleman from Massachusetts first up, (Mr. CROWNINSHIELD,) had made a long harangue on the state of the nation, and said that no difficulties arose under this law. The custom-house of Philadelphia, in answer to an inquiry by a deputation from a body of merchants, declined giving an opinion as to the operation of some of its provisions. Every person knew how the bill originated; when the gentleman from Maryland, who was not now on the floor, (Mr. NICHOLSON,) brought forward the resolution, it was general, as all resolutions were, and merely declared the principle; when it was agreed to and referred to a committee to bring in a bill, instead of going into the necessary details, they took the mere words of the resolution. As to some observations from the gentleman from Tennessee, (Mr. RHEA,) one of which was that the law did not embarrass the merchants, he should only observe that it appeared to be the privilege of a member of Congress to speak on every subject that occurred, whether he knew anything about it or not. He should say no more, but that his feelings had been excessively wounded by the observation of the gentleman from Pennsylvania, (Mr. SMILIE,) when he knew that the memorialists, whose all was now at stake, were honest men, though of different politics from himself.

Mr. NICHOLAS said, it was urged by the memorialists, as one reason in favor of their prayer, that the law needed amendment; another was, their fear of irritating Great Britain. He wished to God the United States might remain at peace with every nation on earth; but hoped they would only accept of it upon honorable terms. He did believe, that while acts of hostility were committed, while the armed vessels of Great Britain still floated in the waters of the United States, in defiance of an interdictory proclamation, it would never be determined by the representatives of the great body of the American people, that it became them to take any measures to conciliate. The Executive had sent no supplication; he hoped it had made a demand, that must be complied with, or they must appeal to arms, or make a total sacrifice of the national character. He felt no disposition to reject the memorial, but he would not vote for its reference to any committee; and would submit it to his friend from Virginia, (Mr. BASSETT,) whether it would not be acting more for the interest of their country, to spend their time in making preparations for events, than in discussing such a question as this memorial involved, and whether his purpose would not be equally answered by a discussion of what had for its object the defence of the country.

Mr. ELLIOT said, if it were true that there did exist in our country a British party, it was a subject which ought to excite no inconsiderable alarm; but he had seen no reasons for an apprehension of this kind. If there were in the country a British party, possessing talents, property, and influence, how unfortunate was our situation! If, said Mr. E., after the outrages which have been committed, by violations of our rights and jurisdiction, there be a party ready to advocate that cause, we are unfortunate. If there be a British party, I hope it is the only foreign party in the country. But how was the question of a British or any other party now before them? A petition had been presented to the House, and a motion made for its reference to a committee, to give it the only course which a petition ever took. Was there any reason why this petition should not be referred? It regarded an important subject, a national concern. Was it couched in insulting or disrespectful language? He was not in the House when it was read, but understood it was perfectly respectful. The Emperor Napoleon, when opposed by Alexander, heading a column of 500,000 men, if a petition were offered to him by the meanest of his subjects, would at least smile on the petitioner, and put the paper in his pocket. Whither were the House going? He was apprehensive that there were two cabalistic words, either of which were sufficient to silence a petioner or a member. British party was one. Was a petition presented, and a motion made to refer it, some one rose and told them the petition ought not to be referred; it came from a British party. Was a motion, on the face of it unexceptionable, proposed, they were told the mover had no confidence in the Executive, and must be voted down. No confidence in the Executive! Vote him down! Were they to reject petitions because they expressed no confidence in the Executive? He understood some allusions to be made in the petition to demands made by our Government. In turning to the Message of the President, he found no mention of such demands. After noticing the interdiction of our waters, the President says, "an 'armed vessel of the United States was despatch-'ed with instructions to our Ministers at London 'to call on that Government for the satisfaction 'and security required by the outrage. A very 'short interval ought now to bring the answer," &c. No intimation was given of the demand which was here mentioned being connected with any other demand. But did the petitioners intimate anything which did not arise from the general understanding that this demand had been connected with other demands, regarding perhaps questions of still greater importance. Such was the general understanding of the country. He did not undertake to question the policy of such demands. He did not want confidence in the Executive himself, but would not reject a petition because it did not express the same sentiment.

Mr. NELSON could not tell how the gentleman from Vermont had got into the argument about a British party in the country, except it was because Mr. N. himself had called for the reading of the

names subscribed to the memorial. He had no idea in doing this of inquiring whether there were a British party in the country or not. He merely wished to know whether the memorial was signed by the community at large or by merchants only; because he knew that the interest of the great body and the mercantile interest were very different, and if the latter were to have its way the country would be plunged into a war for its commerce, at the expense of the resources of the whole community. But the gentleman had said that if the greatest monarch on earth were presented with a petition from his meanest subject, he would at least smile on the petitioner. Mr. N. hoped this would never be the case here; that this House would not, courtier like, smile, but boldly, and like a republican, frown in the face of a man whose petition they did not like, and not put it in their pockets, when they did not mean to attend to it. If the petitioners asked for what ought not to be done, the respectability of their characters should have no weight with the House in favor of it.—Circumstances had much changed since the adoption of the law. Did they not recollect that previous to its adoption it was proclaimed throughout the country, that it was more than the United States dared to do, to pass such a law? The law had been passed; they were now on the eve of a war, and the British nation had said to them, if you persist in this law, we will consider it a declaration of war. Ought we under these circumstances to refer applications made for the repeal of that law? Was it not time misspent even to consider whether they would refer the memorial or not? He confessed he did not much like the law when it passed, but he voted for it, because he thought something ought to be done. But should they now retreat? He hoped not. He hoped the petition would neither be referred to any committee, or lie on the table; he wished it to receive no consideration whatever.

Mr. Bassett withdrew his motion for referring the memorial to a Committee of the Whole on the state of the Union, not that he was perfectly convinced his proposition was incorrect; as it was made with a view to the subject and not to the petition; but he was not one of those who wished a question taken on a motion merely because he made it himself. Another reason was, that he understood that it was contemplated to take up a report of the Committee of Aggressions to-day, when the House could go into a general discussion.

Mr. W. Alston withdrew his motion for a reference to a Committee of the Whole, as he did not wish to show any particular complaisance to the petition.

The Speaker said the question now recurred on the reference to the Committee of Commerce and Manufactures.

Mr. Rhea, of Tennessee, should not have risen again but for the observations of the mover of the reference, (Mr. J. Clay,) who understood him to say that the law would not embarrass the merchants. The gentleman had misunderstood him; he did not think it would embarrass any merchants who considered the honor and dignity of the United States. Mr. R. admitted that he knew nothing of commerce, for he was no commercial man; but this he knew, that the act prohibited the importation of certain articles, and was passed to support the honor of the United States. He also knew that the subject-matter of the petition, so far as it went to the repeal of the act alluded to, went to lower the dignity of the United States, and in order to induce an amicable termination, wished them to depart from the ground they had taken. Mr. R. said he should never be one of those who would refuse to consider a petition of a private nature, which did not include a national subject; but this required them to do an act which would derogate from the national honor. If he might refer to British publications, was it not now said that there ought to be a total prohibition of neutral commerce. The petitioners had every reason to suppose that our Government was doing everything which it could to procure an amicable adjustment of existing differences. Why then bring these things forward to impede its operations? Mr. R. felt all possible confidence in the Executive. He believed the instructions which had been sent, though he did not precisely know what they were, were proper and dignified. But the policy of the British Government would not admit any principle that would impair her absolute sovereignty of the ocean: and so long as that disposition existed, so long our remonstrances would be unheard, as they were before the Revolution. If he mistook not, our remonstrances at that time were thrown under the table. And would gentlemen insist that this petition should be referred, when it might commit the honor of the United States? He knew nothing of the petitioners, not even their names, but the subject-matter of their petition he abhorred. He had no objection when the proper time came round, to assist in the repeal of the law. When all our differences were settled, then those provisions might be set aside. He hoped the House, in its present situation, would not only hold on the law, but go still farther.

Mr. Sloan rose to say, that his sentiments as to this memorial were exactly similar in one respect with those expressed by the gentleman from Virginia. He thought with him, that the purport of the petition was such as to arouse their feelings and inquiries too. He had no right to arraign the motives of the petitioners, but he had a right to express his opinion of the matter of that or any other petition presented to the House; and he would say he considered it as embracing the interests of Great Britain. Taking it in this point of view, he thought they should not notice it farther than to reject it.

Mr. D. R. Williams felt differently from most gentlemen on this subject. If he could consider its effects as the gentleman from Tennessee had done, he should vote with him—but he could not see how that effect could be produced. If he could conceive that it had originated from a British party in Philadelphia, he should feel differently; but not feeling thus, he hoped he should not be denounced as one of a British party, if he voted

in favor of its reference to the Committee of Commerce and Manufactures. Giving to this memorial all the importance with which every gentleman had clothed it, he would ask the House to recur to a correct principle guarantied to the people by the Constitution: the right peaceably to petition for a redress of grievances. If they suffered foreign relations to influence them in considering Constitutional questions, any corrupt Executive might hereafter turn the very means to their destruction which were guarantied to them to secure their safety. This was not the day when the right to petition was the most sacred under the Constitution; but, that day might arrive, and the tendency of such conduct as has been recommended, is directly calculated to produce it. Suppose the object of the petitioners was to produce in Great Britain the same opinion which the circular letter of the American Commercial Society of Liverpool had in this country; is a contemptuous silence best calculated to defeat the object? I say no. The petition is now in the power of every man interested in its circulation; it ought not to be suffered to go abroad without the antidote accompanying it; refer it then to the Committee of Commerce and Manufactures, and if there was not talents enough in that committee to send them a Roland for their Oliver, he trusted there was in this House.

Mr. FISK considered the right of petitioning in all cases a Constitutional right; but he did not consider it necessary at the same time to act on all petitions. This petition had been presented, and he thought the question of considering the petition of more importance than the subject itself involved in it. He was so unfortunate as to conceive that, although the language was good, the sentiments it conveyed were improper and disrespectful. He considered them improper, as exciting alarm; the petitioners had said they were extremely alarmed from rumor at the extent of the demands made by our Executive on the British Government. Where did they get their information? What these demands were they had not stated; were rumors to authorize them to come forward in this manner? One object of their petition was the repeal of the non-importation act, because it was necessary for a further adjustment of our differences with Great Britain, and because it might irritate her! Whence this great respect for Great Britain? Was it due to her conduct? Was it due to the impressment of our seamen, whom she had retained for seven years? Was it due to the principle she had interpolated into the law of nations, to the destruction of neutral commerce? Was it due to the blood of Americans which she had split, and the outrages committed on our public and other vessels? Is she, said he, entitled to respect from us for these? And yet gentlemen tell us this memorial contains respectful language! They no doubt felt the effects which might result from war, and he also wished for peace for his country; but would never purchase it by stooping to Great Britain or any other Power. Had not Congress a right to regulate our commerce without consulting her? Had she been so complaisant to us? Was her justice so great as to call upon us to repeal this law? These questions needed no answer; he hoped the petition would be rejected.

Mr. G. W. CAMPBELL said, he rose with much reluctance to submit to the House a very few remarks, on this subject. The real question now to be decided was, whether the subject of the petition under consideration was such as ought, at this time, to claim the serious deliberation of the House in order to decide on its merits. Was the prayer of it such as they should deliberate about granting? If it was doubtful what the decision on the merits of this petition ought to be, then it should be referred; but, if on the first glance of its prominent features, its object was evidently inconsistent with the honor and dignity of the nation; if there could be no doubt with regard to the final decision that ought to be made upon it; this House ought not to refer it to any committee whatever. It was in this point of view he considered this petition. It appeared to him as little less than an insult to the understanding of the House; and when all the facts relating to the subject were taken into consideration, he was convinced the House would be of opinion that this application was, if not a direct, at least an indirect insult on their dignity. It was said, the people had a Constitutional right to petition, and that this House ought to hear their petitions. This right, he said, was not denied; the petition had been received and read in this House; and the question now was, how it should be disposed of; which must be decided according to the subject-matter of the petition, and will in no manner interfere with the right of the people to petition. In this petition, said Mr. C., the petitioners state, they are alarmed in consequence of the high demands made by this Government on Great Britain, and that their alarms are increased by public rumor. How, asked Mr. C., do these petitioners know the nature of the demands which have been made? And with what propriety do they state to this House their alarms on account of demands made by Government for redress, at a time when the whole nation feel with indignation, the insult which had rendered those demands necessary? But, suppose the House should refer this petition; it would be essentially necessary, before they could act on it, or remove those alarms complained of, that they should know what those demands were that occasioned them. They could not decide on the subject without knowing them; and how were they to obtain the information. Negotiations on the subject were now pending; the petitioners could not therefore expect that an inquiry into the nature of those demands would be made by this House, and it would not be consistent with the interests or policy of the nation to make such inquiry, until the result of those negotiations was known. What benefit could therefore result to the petitioners in regard to the pretended ground of their alarms from referring their petition? None. But the object of the petitioners is to obtain a repeal of the non-importation act; and they state as the reasons for wishing this repeal, that the act is

calculated to embarrass the merchants of this country and irritate the people and Government of Great Britain.

If gentlemen would reflect a moment on this subject, they would be convinced, that if the petitioners had paid a proper respect to the interest of their country or the dignity of this House, they would not, at this time, have made this application. The passage of that act was the first step which had been taken by the American Government, declaratory to their determination to resist aggressions which had been long continued on their commerce and citizens. It was passed by a large majority of this House, after a full discussion of its merits. At a subsequent session its operation was suspended; and on what ground? On this express ground, which was officially made known to this House, that Great Britain had manifested a friendly disposition towards this country, and that our differences with that nation were in a fair train of amicable adjustment—and with this information before them, Mr. C. said, they had only suspended the operation of the act, but had not repealed it. This was done with a view to meet, in a proper manner, those friendly advances on the part of that nation. Had anything since taken place calculated to conciliate the affections of this country, or which ought to induce the Government to abandon the ground of resistance which they had taken, or shrink from a perseverance in those measures first determined on, and still deemed necessary for the attainment of justice; on the contrary, had not the conduct of Great Britain since, been a tissue of aggravated insults? Had not one aggression been committed after another, in regular succession, and with increasing atrocity, until the climax of aggravated injury was completed by the attack on the Chesapeake? Was it necessary to repeat the circumstances of this outrage, which, for cowardly arrogance and deliberate insult, exceeded anything of the kind ever known among civilized nations? The universal indignation which it excited throughout the Union, still remains unabated, and would continue to do so while the crime was unatoned for; and yet, under these circumstances, said Mr. C., we are called upon to retreat from the ground we had previously occupied; to relinquish the only measure of resistance we had taken. After the murder of Pierce, and the still more barbarous murder of his fellow-citizens in the Chesapeake, since the passage of that law, and its suspension, you are called upon to retrace your steps, to decline all resistance, to shrink from the contest; and virtually to say to Great Britain, we feel your chastisement, and we regret that we have taken any step which may irritate your people or Government. The people of America, said Mr. C., would frown with indignant contempt on a conduct of this kind; and even the people of Great Britain, if they possessed the spirit of freemen, would feel a contempt for a conduct so pusillanimous, so inconsistent with the dignity of a nation. They could not do otherwise, however they might seem to approve the measure, than despise the meanness of a people, who would make a show of resistance in defence of their injured rights, and after repeated insult, relinquish the contest, without reparation, and tamely submit to the most aggravated aggressions. If we were to deliberate on pursuing such a conduct; if we expressed a doubt on the propriety of rejecting with indignation such a proposition, we would justly merit and receive the universal execration of the people of America. Mr. C. concluded by declaring his determination to vote against the reference of the petition to any committee, and expressing his hope that such reference would not be agreed to by the House.

Mr. Eppes said, that in voting against the reference of this petition, he should not consider himself as casting a censure on the presenting it, or as violating the right of petitioning, which every man possessed. One reason only would influence him in his vote. He did not consider Congress possessed of that information which would enable them to act on any subject relative to our relations with Great Britain. He thought the House should not depart from a rule which they had laid down; though they had been four weeks in session, and every gentleman felt a sense of the injury received, they were determined not to take any step till they had full information on which to ground their determination. And now, because a body of merchants came forward and petitioned for it, should they depart from that rule? It had been said that not referring it would be a disrespect to those who offered it; and the gentleman from South Carolina had said it would be a violation of the Constitution. With respect to the petitioners, a petition introduced by them would meet with the same respect from him as if it had been introduced by the most conspicuous member in the House. If a motion had been made by a member to inquire into the propriety of repealing this law, he would in the same manner have voted against referring it. As to the Constitutional right of petitioning, when a petition was received and read, the Constitution was fulfilled. Whether it should be referred, or how otherwise disposed, remained for members to determine, for which decision they were answerable to their consciences. This objection was fully answered by the precedent in the case of the Yazoo claim, the memorial on which was rejected without a reference. Under these views he should vote against the reference, and, in doing so, did not wish to wound the feelings of any member, or consider himself as violating the Constitution.

Mr. J. Clay conceived that the Constitution, in securing to every citizen of the United States the right of petitioning, meant that the nature of his petition should be inquired into; but he was neither advocating the petition, nor vindicating the intentions of every man whose name was subscribed to the petition. He only wished that a proper respect might be paid to it. There was no necessity for entering into Executive secrets, or to go into the office of the Secretary of State. He merely wished an inquiry into the petition.

Mr. Cook was sorry that so much time had been spent to so little purpose. He conceived that the Committee of Commerce and Manufactures

had no further information on our political relations than any other part of the House.

Mr. REA, of Tennessee, said he should always consider sacred the Constitutional right of petitioning the Legislature on any point; but it was in the power of the Legislature to say whether they would give that petition a hearing or not after they had received it.

Mr. LYON said it was immaterial as to the respectability of the petitioners. He understood what the nature of the petition was, and thought it right that they might make an inquiry. He wished them to have a direct answer, and as quick as possible, by a refusal to refer their petition.

The question was then agreed to be taken by yeas and nays.

Mr. RANDOLPH very much regretted that the gentleman from Massachusetts should have attempted to make this a party question; but as the yeas and nays were called he was compelled very reluctantly to say a few words upon it.

[Mr. CROWNINSHIELD, in explanation, said, that he had no idea that anything had dropped from him which went to show that he considered it a party question, for he did not mean so to consider it himself; he did not know the political characters of the petitioners—whether in or out, whether called republicans, or of what other denomination. It ought not to be discussed as a party question, but the question ought to be this: whether in our present delicate situation it were proper to refer it at all? He would not interrupt the gentleman further.]

The explanation of the gentleman might have been very satisfactory to himself; but Mr. R. could not comprehend it as such. After what had passed—when his friend from Pennsylvania (Mr. CLAY) had been denounced even for presenting the petition—a man whom he would not degrade by a comparison, in point of character, abilities, or patriotism, with his denunciators—it was easy to see the object which gentlemen had in view. The right of petition was an inherent right of the citizen, recognised by the Constitution; and during the time that he had held a seat in that House, he remembered but a single case in which the reference of a petition had been refused. It was the Yazoo petition which had been mentioned. What examples had been brought forward, on this occasion, to induce them to treat the petition of our indigenous citizens with contempt? The example of that Parliament whose inveterate corruption and stupidity had dismembered the British empire. Had he ever expected to hear the conduct of Parliament under Lord North's administration, towards these then colonies, cited to justify any procedure of that House in relation to its own citizens? The freemen of America had a right to petition, to recommend, and advise, not only with respect to the past, but to the future also. If they did not possess this right, how was the nation to be undeceived if once it should be plunged into error? Suppose a motion brought forward in that House for a declaration of war against Britain, would it not be competent to the people to present memorials and remonstrances for or against it? And could any man pretend to say that the national welfare and dignity would be less involved in such a case, than in a proposition to repeal that thing of shreds and patches, the non-importation law, which to this hour had never been put into operation? The consideration of a memorial is one thing, compliance is another. The suggestion of the gentleman from South Carolina (Mr. D. R. WILLIAMS) was unanswerable. If the petition is unreasonable, if it requires what it would be impolitic and undignified in them to grant, let its weakness be exposed in a well drawn, masterly report, which might receive the sanction of the House. Would not this be more dignified in reality, as well as more satisfactory to all parties, than to slap the doors in the petitioners' faces, affecting the airs of Asiatic monarchs, refusing to listen to the prayers of their subjects, for subjects he must be allowed to call them, if the House persisted to treat them as such?

On the eve of a foreign war, they were treading in the footsteps of the British ministry at the commencement of our Revolutionary struggle, and of the war with France, which was suspended by the truce of Amiens—turning a deaf ear to the prayers of their own people. The British Parliament would not listen to petitions against the war. The commanding eloquence of Mr. Fox himself could not obtain a hearing; he was obliged to quit the House of Commons. What followed? On the verge of the grave, he was called, by the unanimous voice of his country, to repair, if possible, those mischiefs against which he had vainly protested, and which he had fruitlessly labored to avert.

Mr. R. denied, as far as his understanding enabled him to comprehend its drift, that there was anything in the petition derogatory to the dignity of the House. "They mean not to intimate a 'wish for disclosures incompatible with the due 'reserve of Government, but candidly to present 'to its view their difficulties and embarrass-'ments." They also told the House, "that al-'though in the event of war, as individuals, they 'must be deeply affected, they have not a wish 'that considerations of private interest should in-'duce a sacrifice of national honor and independ-'ence." What more could they say? And what did the gentleman consider as the basis of the national dignity and honor? The non-importation act, a thing at this time so contemptible, that were a proposition made for its repeal he would hardly give himself the trouble to vote for or against it. Did the non-importation law constitute all their preparations for a war with Great Britain? It was idle to attach any importance to it. But make what they could of it, less than the Constitution, the citizens had a right to petition for its repeal or modification, and Congress, if they did their duty, would take their case into consideration. A gentleman had told them that if such a proposition were made by a member of that House he would not consider it. Would he not? Would he say, "we have such confidence

'in our numbers, and so little reliance on our un-'derstandings, that we will not discuss the point 'with you, but trust to our votes." It was a matter of course to consider any proposition; negative it, if the House chose, and then they were done with it. If they were, as he most solemnly believed, to have a war with Great Britain, it behooved them at the outset to conciliate those by whom it was to be carried on—the whole body of the American people—not to do the merchants (to adopt the language of his friend from Maryland, Mr. R. Nelson) more justice than the landholder or mechanic, but not less. Let us not, (said Mr. R.,) if we must have war, set out on the principles with which Mr. Pitt and his majority began their war with France—principles of proscription to all inquiry. Let not the example of their arrogance and its humiliation be lost upon us.

Mr. Eppes said the gentleman last up had made one observation which he supposed referred to him, as to the consideration of a motion for repealing the non-importation act. Mr. E. said he had used the word *refer*, and not *consider:* it was true, if such a motion were offered to consider the non-importation act, he would have refused his assent to refer that motion.

The memorial was read a second time, by desire.

Mr. Crowninshield would not detain the Committee long. He felt unable to say at this moment what his wishes would dictate on so important a subject. The House would do him the justice to believe, that when he expressed his disapprobation of the petition, he had no wish to detract from the known character of his friend from Pennsylvania who offered it to the House; he had the highest esteem for that gentleman. He entertained that sentiment, and always should, and nothing had fallen from him in the language of denunciation towards that gentleman. He presumed the gentleman from Virginia had alluded to him. [Mr. R. said he had not.] Mr. C. asked pardon of the gentleman. It had not been proposed by any gentleman to reject this petition; he did not recollect any motion to that effect. He had said, when up before, that he did not think it was couched in such respectful terms as it might have been; but he did not wish to reject it. He spoke at large against its reference, because he thought that as they were on the eve of a war, it was possible a deliberation on this law would affect their situation. He did not consider the propriety of repealing it or not; for he conceived that would depend altogether on the nature of the despatches which might be received. But on hearing this memorial read a second time, he perceived a sentiment contained in it which further induced him to view it as not couched in respectful terms. "From the wisdom and patriotism of 'the National Legislature they conceive the ex-'pectation to be well founded, that the commer-'cial interest of the United States, with which 'the common welfare is inseparably connected, 'will not be committed by an unyielding ad-'herence to doubtful or unsettled principles." Was it a doubtful principle that national vessels should not be searched? He had always thought that it was not a doubtful principle; he thought such ships could not be touched; that a commander could not be interrogated as to his crew or the orders from his Government. Was this one of the doubtful principles to which the petition alluded? On this subject gentlemen could not differ. He did not mean to go into an inquiry into the propriety or impropriety of passing the non-importation law. He thought it a proper measure when it passed, though he wished to have gone farther; he was one of those who wished to pass a total non-importation law. It was well known why such a law did not pass; he would not enter into a consideration of that now; but many men, agreeing with him in political sentiments at that time, and he presumed they did so now, conceived that a partial non-importation law was more proper. He yielded and voted with them. He thought the House would treat the petitioners with that respect which was due to them, if they were to refuse a reference of their memorial to the Committee of Commerce and Manufactures, and suffer it to lie on the table.

Mr Randolph said, the gentleman from Massachusetts had greatly misconceived him in one respect. He had not alluded to that gentleman as one of the denunciators of his friend from Philadelphia, but as endeavoring to make this a party question, which he thought was both unfair and imprudent. He still thought so. With what propriety could gentlemen be represented as the friends of a proposition, merely because they were willing to consider and discuss it? The denunciation of his friend was in the recollection of the House. Was it prudent, for the mere gratification of personal or party spleen, to hold up those who should vote for the reference as disaffected to the cause of our national wrongs? When persons of a different political character held the reins of Government, petition after petition was poured into that House, complaining of its acts. During the time that Mr. R. held a seat in it, these petitions were always referred and discussed, although they were rejected. Although the sedition law, of unconstitutional memory, was enacted and re-enacted, and the Legislature had repeatedly expressed its opinion of its justice and expediency, and although it was scarcely possible to draught a memorial against that detestable act without uttering harsh things, at least by implication, against its authors, yet it was not held to be presumption in the petitioners, which derogated from the dignity of the House, to question its infallibility. The petitions were received, and produced elaborate replies by way of report, before they were rejected.

Mr. R. thought the gentleman from Massachusetts totally mistaken in supposing the petitioners to consider the claim to search public armed ships as a doubtful principle. On the contrary, they wished the national honor to be maintained. But they might believe doubtful principles to have been blended with an undoubted one; and

even this position is advanced with hesitation. If the gentleman himself would exchange a few of his certainties for doubts, he would not be a less useful politician. As to the non-importation law, he would in pity spare it—but, it could not be forgotten that wonders had been promised from it, and that, only at the last session, the gentleman himself had boasted that its potent spells and incantations had induced Great Britain, who had as obstinately refused to hear us, as the gentleman himself did this petition, to open her gracious ears and listen to all our demands, which were in a fair way of being complied with. Because gentlemen differed in opinion with the petitioners—he himself differed with them, he deemed the repeal of the law of no sort of consequence—was that a reason why they should not be heard? Were not petitions every day referred that had been a hundred times rejected—that were known to be barred by the act of limitation? Was it ever deemed an insult upon their dignity that Oliver Pollock, or Stephen Sayre, would take no refusal from them, but persisted in petitioning until they got their money? Most certainly not.

The question on reference to the Committee of Commerce and Manufactures, was then taken—yeas 50, nays 79, as follows:

YEAS—William W. Bibb, Epaphroditus Champion, Martin Chittenden, Joseph Clay, Howell Cobb, John Culpepper, Samuel W. Dana, John Davenport, jun., James Elliot, William Ely, Francis Gardner, James M. Garnett, Edwin Gray, John Harris, John Heister, William Hoge, Robert Jenkins, Walter Jones, James Kelly, Thomas Kenan, Philip B. Key, William Kirkpatrick, Joseph Lewis, jun., Edward Lloyd, William Milnor, Thomas Moore, Jeremiah Morrow, Jonathan O. Mosely, Thomas Newbold, Timothy Pitkin, jun., John Porter, Josiah Quiney, John Randolph, John Rea of Pennsylvania, Jacob Richards, Matthias Richards, John Russell, Dennis Smelt, Richard Stanford, William Stedman, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, John Taylor, John Thompson, George M. Troup, Jabez Upham, Philip Van Cortlandt, Killian K. Van Rensselaer, and David R. Williams.

NAYS—Evan Alexander, Lemuel J. Alston, Willis Alston, jun., Ezekiel Bacon, David Bard, Joseph Barker, Burwell Bassett, William Blackledge, John Blake, jun., Thomas Blount, John Boyle, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, George W. Campbell, Peter Carlton, John Chandler, Matthew Clay, Orchard Cook, Jacob Crowninshield, Richard Cutts, Ezra Darby, Josiah Deane, Joseph Desha, Daniel M. Durell, John W. Eppes, William Findley, James Fisk, Meshack Franklin, Barent Gardenier, Peterson Goodwyn, Isaiah L. Green, William Helms, James Holland, David Holmes, Benjamin Howard, Reuben Humphreys, Daniel Ilsley, Richard M. Johnson, Nehemiah Knight, John Lambert, John Love, Matthew Lyon, Robert Marion, Josiah Masters, Daniel Montgomery, junior, John Montgomery, Nicholas R. Moore. John Morrow, Gurdon S. Mumford. Roger Nelson, Thomas Newton, jun., Wilson C Nicholas, John Pugh, John Rhea of Tennessee, Samuel Riker, John Rowan, Lemuel Sawyer, Ebenezer Seaver, James Sloan, John Smilie, Jedediah K. Smith, Samuel Smith, John Smith, Henry Southard, Clement Storer, Peter Swart, David Thomas, Abram Trigg, James I. Van Allen, Archibald Van Horne, Jesse Wharton, Robert Whitehill, Isaac Wilbour, Marmaduke Williams, Alexander Wilson, Richard Winn, and James Witherell.

So the question for reference was lost.

Mr. NEWTON, said that in voting against the reference to the Committee of Commerce and Manufactures, he did not wish to treat the petitioners with disrespect; but he thought that under present circumstances, it was not expedient to act upon the memorial. He wished it to lie on the table, whence it could be called up at any time, and made a motion to that effect.

The SPEAKER said, if no further order were taken on the memorial it would lie on the table of course.

No further order being taken, it was ordered to lie on the table.

BRITISH AGGRESSIONS.

Mr. BLOUNT moved for the order of the day on the second report of the Committee of Aggressions; he wished the House to go into Committee of the Whole on the subject, and remain in Committee (as it was then late) no longer than to give the business priority over any other on the next day of meeting.

Mr. RANDOLPH inquired why the second report should have preference over the first, and why both had not been referred to the same Committee of the Whole, as one depended on the other. Why were they shuffled about in this manner? Why was the cart to be put before the horse? Why was the second brought upon the tapis, and the first reserved?

Mr. BLOUNT stated, that the first was merely declaratory of the nature of the act, and detailed that information which had been so loudly called for from some parts of the House; the second contained resolutions for preparing for defence, which he conceived should be first acted upon.

Mr. RANDOLPH moved, that the Committee of the Whole, to whom the second report or second part of the report was referred, should be discharged from the consideration of it, that it might be referred to the same Committee to whom the first part had been referred.

Mr. BLOUNT'S motion being that under consideration, a considerable debate ensued, which branched widely into the subject; in the course of which,

Mr. BLOUNT stated, that the gentleman from Virginia (Mr. RANDOLPH) had desired Mr. B. to let him know when the report was to be called up. He had told the gentleman, this morning, that he intended to call it up to day. If the gentleman had then expressed a desire that both reports should be referred to the same Committee of the Whole, he would have accommodated him by making a motion to that effect.

Mr. RANDOLPH said he would take the gentleman from North Carolina at his word, and withdraw the motion he had offered, trusting to the gentleman to renew it.

Mr. BLOUNT withdrew his motion, for immediately taking up the second report, and renewed Mr. RANDOLPH'S motion; on which the debate was continued. The gentlemen who took part

in the debate on this subject were Messrs. Randolph, Blount, Chandler, Dana, Eppes, Thomas, Rowan, Nicholas, W. Alston, Lyon, Quincy, G. W. Campbell, Burwell, Taylor, and Smilie.

The question being on the motion as renewed by Mr. Blount, was negatived, 67 to 40.

Mr. Eppes moved that the order of the day on the first report of the Committee of Aggressions be postponed till this day week—Carried, yeas 58, nays 47.

A motion was made that when the House adjourned, it should adjourn till Monday—Carried 61 to 43.

Mr. Blount then renewed his original motion, that the House shonld now go into a Committee of the Whole on the second report of the Comittee of Aggressions.

Mr. D. R. Williams said that it wanted but five minutes of five o'clock, and he hoped the House would adjourn—Carried, 54 to 44.

Monday, November 30.

Mr. Findley presented a petition of the Associate Reformed or Presbyterian Congregation, in the city of Washington, by Joseph Nourse and others therein named, trustees of the said congregation, praying that an act to incorporate their said church may be passed, containing such regulations and privileges as to the wisdom of Congress shall seem meet.—Referred to Mr. Findley, Mr. Nicholas R. Moore, and Mr. Taggart; to examine and report their opinion thereupon to the House.

Mr. Blount, from the committee appointed on so much of the Message of the President of the United States as relates to "aggressions committed within our ports and waters, by foreign armed vessels; to violations of our jurisdiction; and to measures necessary for the protection of our ports and harbors;" presented to the House two letters, addressed to him as chairman of the said committee, from the Secretary of the Navy, accompanied with a statement, marked A, relative to the number and condition of the frigates and other vessels of war belonging to the United States, and to the additional number of gunboats necessary for the protection of our ports and harbors.

The said letters and statements were read, and ordered to lie on the table.

NAVY OF THE UNITED STATES.

Mr. Cook said, that the House had been long in session, and had yet done nothing towards the purpose for which they were called together. For the purpose of consideration of the subject, and for obtaining the proper information, he offered the following resolutions:

1st. *Resolved*, That the Secretary of the Navy be directed to lay before this House a statement of the frigates, and other armed vessels composing the Navy of the United States, distinguishing those in actual service from those in ordinary, and noting such as want repairs, with an estimate of the sums necessary to prepare them for immediate service, and the probable time necessary to make such repairs.

2d. *Resolved*, That the Secretary of the Navy be directed to lay before this House a statement of the number of officers and men respectively belonging to the Navy of the United States and the corps of marines.

3d. *Resolved*, That the Secretary of the Navy be directed to lay before this House an estimate of the number of officers and men which would be necessary to complete the manning the whole and entire Navy of the United States, including the gunboats, with an estimate of the expenditures respectively necessary for maintaining them, in actual service, during one year.

4th. *Resolved*, That the Secretary of the Navy be directed to lay before this House a statement of the quantity, quality, and present state of the timber and other materials belonging to the United States, now on hand, suitable for building ships of war, describing the force and size for which such timber and other materials are suitable.

Mr. Blount objected to the passage of the first resolution as entirely unnecessary, as he held in his hand a letter from the Secretary of the Navy, giving part of the information asked for by that resolution, and as the Committee of Aggressions had actually requested of the Secretary of the Navy information which would embrace all that was contemplated by it.

Some conversation ensued on the particular information wished, and the propriety of calling for it, between Messrs. Cook, Blount, Smilie, Milnor, Mumford, Dana, Tallmadge, and Gardner; during which a motion was made by Mr. Smilie to postpone the consideration of the resolutions till this day week, on which Mr. Mumford offered the following remarks:

He said, that more than a month had expired since they were assembled here on an extraordinary occasion, and the nation had been constantly looking up to them in full expectation that they were occupied in measures of defence. It was true that a select committee had made a report authorizing the Secretary at War to sell a few muskets and establish a cannon foundry in this place; it was also true that the Committee of Aggressions had made a report. He did not mean to arraign the measures of their committees; it was far from his intention; he had the fullest confidence in them, he made no doubt they had discharged their duty with fidelity. But they had also duties to perform to themselves and to their country, and he did hope they would, immediately proceed on measures of defence. Would they put it in the power of a foreign Minister to write to his Court that they might pursue their own measures, that they had nothing to apprehend from the American Congress, as they were occupied in their domestic concerns? Although they had no official information of late date before them relating to their affairs with Great Britain, he yet presumed every member of the House was convinced of the hostile disposition of that Government. Look to Nova Scotia, (said Mr. M.,) you there find her militia in a state of requisition, fortifying the port and harbor of Halifax—numerous reinforcements daily arriving

there, and at Quebec, under the command of a vigilant enterprising officer; the whole of their naval force on the Lakes prepared for war; numerous tribes of savages assembled at their instigation in the neighborhood of Detroit; a secret expedition from Europe, consisting of two hundred thousand men, ostensibly given out for South America to re-conquer Buenos Ayres, when in fact they might attack some vulnerable part of our country; fourteen sail-of-the-line and eighteen frigates they had heard were bound to the West Indies, when in reality they might, together with what force they had at Halifax, blockade the whole of our ports and harbors, in order to overawe our Government, and enforce the demands very likely to be made by their Minister Extraordinary daily expected to arrive in this country. When they were thus threatened, there could be but one sentiment, and he hoped they would not delay a moment in taking such efficient measures as would at least defend the country.

Mr. COOK consented to withdraw the first resolution till the information asked for by the Committee of Aggressions was received, which might altogether supersede it, or induce him to modify it so as to obtain his object.

The three last resolutions were then agreed to, without division.

FORTIFICATIONS AND GUNBOATS.

On motion of Mr BLOUNT, the House went into a Committee of the Whole, on the second report of the Committee of Aggressions, which recommends the following resolutions:

Resolved, That it is expedient to authorize the President of the United States to cause such fortifications to be erected as, in addition to those heretofore built, will, with the assistance of gunboats, afford effectual protection to our ports and harbors, and preserve therein the respect due to the constituted authorities of the nation; and that there be, and hereby is, appropriated for that purpose, out of any moneys in the Treasury not otherwise appropriated, the sum of —— dollars.

Resolved, That it is expedient to authorize the President of the United to cause to be built an additional number of gunboats, not exceeding ——, and to arm, equip, man, fit, and employ the same, for the protection of our ports and harbors; and that there be, and hereby, is appropriated for that purpose, out of any moneys in the Treasury not otherwise appropriated, the sum of —— dollars.

The report being read, and the first resolution under consideration—

Mr. BLOUNT said, he would state, in as few words as he could, the views of the committee in presenting to their consideration the resolution now before them. It would be seen that the committee were of opinion that the fortifications contemplated were equally necessary in time of peace and in time of war. For the circumstance of our being at peace hitherto had not restrained the rapacity and insolence of British naval commanders, and similar conduct would be continued, unless there were created in our harbors a force sufficient to repel it. The contemplated sum to complete the fortifications already established and to erect others, was, in addition to what remained unexpended of former appropriations for that purpose, about $750,000, in case a war took place; in case of peace, or our former state, not properly of peace or war, $300,000 would be sufficient, that being as large a sum as could conveniently be expended in the course of the year. It was not necessary that the blank in the resolution should be filled at present, and it would accord better with his wishes, if it were left till a bill should be brought in conformably to the resolution.

The second resolution proposed an appropriation for building a certain number of gunboats. The reason of preference by the committee of this mode of defence, was, that it was the only defence that could be provided in a short time. However gentlemen might differ in opinion with respect to a naval force, all would agree that at this time they had not means or time to provide any other defence than that proposed by the committee. It was proposed to erect one hundred and eighty-eight additional gunboats, which, with the number already built, would amount to two hundred and sixty-seven, the number proposed as sufficient for the purpose of defence. The Secretary of War, who was not called upon in form to give information to the committee, was requested to call on the committee, and converse with them on the subject, and the substance of his answers was contained in a paper which Mr. B. held in his hand, but which the committee did not propose should be submitted to the House at present, as it might contain matter not proper for disclosure. He would put it into the hands of the Clerk, who might read such parts of it as would show what were the views of the Secretary of War on the subject—such as gave entire satisfaction to the committee, and such as they hoped would be satisfactory to the House. With these observations, and one other, that these fortifications were not contemplated to be of a fixed or expensive kind, but principally heavy artillery mounted on travelling carriages, that might be moved from place to place, he would submit the subject to the consideration of the Committee.

Mr. DANA inquired if there was any statement of the balance remaining unexpended of former appropriations.

Mr. BLOUNT said there was not a distinct statement, nor was it in the power of the Secretary to give it, but it was upwards of $100,000; which, in addition to $750,000, would make about $874,000.

Mr. QUINCY wished to know, of the chairman of the committee, whether this money was to be appropriated exclusively to erect new fortifications, or repair old ones, or for both.

Mr. BLOUNT said the sum of $850,000 was considered sufficient to complete such fortifications as have been erected on proper sites, and to erect such others as might be necessary in aid of gunboats. The Secretary of the Navy could not state the particular sum that each place would require. Past experience had shown that such express appropriations could not be made. It was the wish of the committee to afford to the Pres-

ident the power of applying these sums to such places as he should think best.

Mr. Quincy wished to know whether the terms of the resolution expressed the intention. He conceived that this sum of money should be placed in the hands of the President of the United States, not only to erect new fortifications, but to repair old ones where necessary. As he understood the resolution, the President was to apply the whole sum to new fortifications, and could not appropriate it, without misapplication, to repair old ones.

Mr. Blount said the object of the committee was to put so much money at the disposal of the President, as to answer both the purposes of repair and erection. If the words did not express that sense, he should cheerfully acquiesce in any amendment which might be made.

An amendment was offered by Mr. Dana, but afterwards withdrawn, to make way for one offered by Mr. Crowninshield to the same effect; by which the resolution was amended to read as follows:

Resolved, That it is expedient to authorize the President of the United States to cause such fortifications to be repaired and erected as will, with the assistance of gunboats, &c.

Mr. Thomas inquired as to filling the blank.

Mr. Blount said he had stated, while up before, that $300,000 in time of peace was as much as could be expended in the course of a year. But if they could not enjoy peace, more would be necessary; and from the uncertainty of this, the committee wished to decline filling the blank at the present time. When the bill should be laid before them, they might be better qualified to judge.

Mr. Gardenier was not so much opposed to the not filling up the blank in the resolution at this time, as to the reason which had been given for not doing it, or in other words, the reasons why the House should not now debate on that part of the resolution on which it was most important to deliberate—the sum to be allowed. It was hardly necessary, except in point of form, to have gone into Committee of the Whole for any other purpose than this. All agreed that the ports and harbors of the United States should be better fortified than they were at present; on that point he trusted there could be but one opinion: but unless a sum certain was named, the people in the seaports would remain in the same state of doubt and uncertainty which they had experienced ever since the commencement of the session. He wished to come to that point which it was most important to consider; he wished to know how much gentlemen would give towards the protection of our ports and harbors. If they were not so fully prepared to decide as they might perhaps hereafter be, he thought they might do much by entering into the discussion of the subject. For himself, he could not readily assent to what had fallen from the chairman of the committee; he could not comprehend the propriety of making a difference between the expense to be incurred in case the appearance of war should increase, and those estimated on a prospect of peace. He had heard nothing said that was calculated to change his uniform opinion on this subject, that a state of peace was the season for a nation which had so many vulnerable points to prepare for war, and place itself in a condition to repel attack. In a state of war, and it seemed to be seriously approaching, it would be impossible to lay out money to so much advantage as in a state of peace. It was in the time of peace peculiarly that they should, as much as they could, erect barriers against some of the most dreadful evils of war: he would here apply the maxim of Washington, quoted by a gentleman from Maryland some days since, "that to preserve peace we should be prepared for war." Supposing it should happen, improbable as it was, that the country should remain at peace, were they on that account to relax in the fortification of their ports and harbors? How could they, acting in this way, expect ever to be prepared for war, when it should actually arrive? A country whose coasts were so much exposed, and whose cities were so rich, so valuable, and therefore so tempting, should never be unprepared; but if, said he, we should be persuaded to postpone the defence of the country, while we are waiting for news and hoping for peace, the enemy may be at our doors; our cities may be sacked, and nothing left in them worth defending; it would be too late then, because it will be to no purpose to fortify, and the money we now talk of appropriating may be saved, while our cities are destroyed and desolated.

Gentlemen seemed to take great delight in flattering themselves that they might yet escape war; they wished, and from wishing, hoped for peace. Mr. G. had no hope that at a period when all the world was convulsed, kingdoms and thrones were overturned in such rapid succession, when all the free States of the world had perished as it were before our eyes, that we should be able to escape without enduring some part of the general calamity. He entertained now the same opinion which he had done ever since the attack on the Chesapeake was made, that the country would be compelled to go to war, or sacrifice its honor forever. They could not avoid it, unless they would accept of peace, on terms to which no independent nation could listen. An attack like that on the Chesapeake had never occurred before. The making of it was not alone an outrage of the very worst character, but also an assertion, of the most positive kind, that Great Britain was about to introduce a new principle into the law of nations. We have endeavored, said he, to soothe ourselves with a hope, that this attack was the mere unauthorized act of a British commander, which his Government might afterwards disavow or not, as they pleased. And while we went on hoping, we might as well hope, too, that they would disavow it. In this hope, said he, we have wrapped ourselves so securely up, that at the very moment I am speaking, the cannon of Britain may be carrying ruin and havoc into our defenceless seaports. Mr. G. could not persuade himself, that a British Admiral would voluntarily assume so awful a responsibility. He could not believe that the Admiral's own or-

ders were less precise and positive than those which he gave to the captain of the Leopard. Yet, if he could even believe that, he could not believe that this outrage would have been followed up, and consummated by bringing to trial, condemning, and executing one of the unfortunate men, who owed his death to his confidence in the inviolability of the American flag; and that, too, after it was known, at Halifax, what poignant sensations the attack itself had excited here; after the President's proclamation itself was known there. He would have paused, said Mr. G. before he proceeded to this dreadful extremity. He would have waited for new, and more precise orders, if his instruction had not been already clear and explicit. Can we, said he, in events subsequent to this, find any cause to console each other with a hope of peace? No, sir. From the time the proclamation was issued, to this very moment, has a British squadron remained in our waters, persisting in the violation of our territory, with an air of scorn and defiance, which, while it ought to awaken all that is American in us, excludes almost every ray of hope. Could gentlemen indulge in hope, when they heard that the British vessels on the Lakes had been armed? That the British forces in Canada were increased and concentrated? That the fortifications at Quebec were repairing? That at Halifax, one hundred men were draughted from the militia, to assist in placing that post in a state of defence? That an additional number of ships and troops were expected? Did anything from our Ministers at St. James's encourage hope? Anything that could be collected from the political journals there? When we see the British Ministry, said he, preparing for war, taking those steps which this Government ought to have taken long ago, could they longer console each other with the hope of peace? There was nothing to induce them to delay for a moment, the most active preparation. It is true, they were in some degree excusable, for not having acted on this subject hitherto. The President's Message, though it had communicated to them information of the attack on the Chesapeake, did not state, whether it was in the opinion of the Executive most probable that we should have war, or that we should not have war; it merely stated, that peace might not continue. They were left, therefore, to deliberate as they could, uninfluenced and undirected by an expression of what was the opinion of the Executive. But as, from their own impulse, they had at last arrived at the subject, he hoped they would go fully into it. Our ports, he said, ought to be fortified, whether we are ultimately to have peace or war; but if only in case of war seeming inevitable, he entreated gentlemen to consider, whether the prospect was not as gloomy as it could be in any state of things short of actual war. But if, contrary to all sound calculation, our peace should continue, the determination to fortify ought in his opinion not to be given up; that, at another time, we may be better prepared than we are now. He hoped, therefore, some opinion would be expressed as to the sum to be appropriated for fortifications: he must profess his conviction that neither of the sums mentioned by the chairman of the committee were enough to satisfy that part of the people to whose safety effectual fortifications were so essential. The sum of $750,000 had been mentioned as a sufficient sum; if they once attempted to fortify, they must do it effectually; if they appropriated a sum for defence it must be sufficient, or the money they did expend, would be completely thrown away. He hoped the House would resolve effectually to protect our ports and harbors: when they did that, they did what their country demanded and had a right to demand of them. When they only half fortified, they made a show to induce the people to believe they would do something for them. He should as soon expect a farmer to fence but half his ground, and thus leave his crop exposed, as that they would go but half way in fortifying against an enemy. He hoped they would not squander away money to no purpose; for his part, he would not vote for less than a sufficient sum; for if he did, he should consider himself as violating those principles of economy which should always be attended to in Government. Mr. G. wished the House not only to make a sound, but act as though they meant to do something. Upon this subject his constituents were feelingly alive to everything which transpired from that House: they had petitioned formerly and had received petty appropriations, which might all have been expended on fifteen feet of ground. This would not do any longer; something must either be done for them, or they must be told that they must take care of themselves, and then they would know what to do.

At this time, when they saw approaching so nearly to them—when they saw almost realized that state of war which they had so often been told might happen, and for which the people had been so often warned to prepare, Mr. G. hoped they would give up some of that tenacious hardfistedness which had hitherto clinched their fingers so closely in the purse-strings of the national Treasury. It was their cities which now called for protection—it was better to expend money in protecting these deposites of individual wealth, these sources of national revenue, than in buying unproductive wildernesses, or speculating in hot-beds of sedition and treason; better protect what they had, than purchase that which might become a curse to them. They had better do something, for what a gentlaman of that House once called "the good old thirteen United States," and not let all their tenderness travel westward. Do something for us, said Mr. G., but do not think of satisfying us by merely pretending to do it; let us know what you mean to do. I feel myself authorised to demand that what we have asked shall be granted to us, or that we shall be told in direct terms that you will do nothing for us. At least deal plainly with us. When you come with your $300,000 or $750,000, what does it amount to? Can any member in the House lay his hand upon his heart, and say, that either of these sums would answer the purpose of effectual defence for the whole seacoast of the United States? Mr. G. hoped the chairman of the Committee of Aggressions

would not misconceive him; he meant no reflection on the Committee or its Chairman. He avowed his belief that the committee meant to discharge their duty—but they must forgive me, said Mr. G., if I too feel the necessity of doing mine.

Mr. Thomas said, that the committee had declared in their resolution, that they would authorize the President to erect such fortifications as would preserve a due respect to the national authority; and he had no doubt, after having made this declaration, they would fill the blank with any sum that might be sufficient to effect the object. He did not mistrust the intentions of the committee; he believed they would make a liberal appropriation to this object, and was sorry that his colleague, (Mr. Gardenier) had raised to view so many visionary fabrics. Mr. T. did not think that either the Legislature or Executive had been dilatory, as that gentleman seemed to think. It was known that there had been last year an appropriation of $300,000 for the contemplated purpose; the Secretary of War had employed as many laborers as he had been able to procure, in the erection of forts at New York, and other places, during the past Summer; and a balance of this money yet remained unexpended. The committee had declared through their chairman that some part of the appropriation called for, in case of war, would be expended in so precipitate a manner, as not to form permanent fortifications. He did not believe that the position was correct, that they ought to make as large an appropriation for peace as for war; because, in case of war, it would be absolutely necessary to reinforce those fortifications already erected by considerable additions. He had no objection now to fill up the blank; but, he thought the pledge contained in the resolution was sufficient, as it declared positively that they would effect the desired object.

Mr. Quincy merely rose to express his wish that the chairman of the committee would make some proposition as to the sum. He was of opinion with the gentleman from New York, that to ascertain the sum to be appropriated was the object of going into Committee of the Whole.

Mr. Alston hoped that in this stage of the business no sum would be applied; it was enough for the House now to say, whether they would or would not adopt the principle contained in the resolution. The question of how much money was not in his mind the great question; for if they passed a law, effectually to protect our ports and harbors, it followed, of course, that they would appropriate a sufficient sum to answer the purpose. The sum, however, had been spoken of, and the gentlemen from New York and Massachusetts seemed in favor of filling the blank immediately. From what had fallen from the gentleman from New York, (Mr. Gardenier,) he was induced to believe that no member of the House could propose a sum sufficient to satisfy him. That gentleman appeared to be full of invective and abuse against the Government. Was it to to be expected that the House would accommodate itself to the wishes of that gentleman, when conveyed in such language? He hoped the House would pursue its usual course, and decide first on the principle; when the bill was brought in, the blanks might be filled, the question being first taken on the largest sum, which would no doubt be proposed by the gentleman from New York. He hoped other gentlemen in the House were quite as well disposed to defend their country as the gentleman from New York; they might perhaps not talk so much, but would manifest their dispositions by their acts.

Mr. Blount said, the committee contemplated the effectual protection of our ports and harbors, and directed their attention particularly to that object. The information which had been given them did not contemplate a system of defence by fortifications alone, which would cost $874,000; but with the aid of gunboats, which would cost perhaps a much larger sum. He moved, to try the sense of the Committee, that the blank be filled with $750,000, which, with an unexpended sum of perhaps 123,000, would make the aggregate proposed.

Mr. Masters moved that it be filled with $1,500,000.

Mr. Bacon called for the reading of the report of the Secretary of War, which had been received by the committee.

Mr. Chandler said that paper did not contain the particular sum, which could not be precisely ascertained. He would answer in reply to the gentleman who inquired why no sum had been proposed, that the Secretary of War had informed the Committee of Aggressions, that the sum of 250 or $300,000 would be sufficient for the expenditure of one year, except in case of immediate war, when a larger sum would be necessary; and this reason had induced the committee to wish that the blank should not now be filled.

Mr. Quincy said, if he had understood the chairman of the committee correctly, there was some reason against publishing the paper just alluded to; if so, he did not wish to trouble the House; but if there were not, he hoped it would be read.

Mr. Blount said he had before stated that the Secretary of War had not been formally called upon for information, but had communicated it verbally. Having done so, the committee asked him to make a statement in general terms, as they did not wish the enemy to know what particular species of fortification might be contemplated. If it should be thought that the House should have information from the Department of War, Mr. B. hoped the Secretary would be called upon to furnish it, that he might give it more formally than was contained in this paper. The committee had adopted the course of verbal communication, because it had been pursued by a similar committee at a former session; the statement contained in this paper was very informal, and he hoped it would not be printed in that state.

Mr. Cook was opposed to filling the blank at this time, from want of information. He wished to see a statement of the sums that would be necessary to put every part of the United States in

such a state of defence as that embraced by the resolution. If gentlemen would give themselves the trouble to count their fingers, they would find that the sum of $750,000 was by no means sufficient. As he thought it probable they might receive more information before it was necessary to fill the blank in the bill, he hoped no sum would be agreed to at this time.

Mr. MASTERS.—I am happy that this subject is before the Committee of the whole House, which has been too often and too long neglected. Though I moved that the blank be filled with the sum of fifteen hundred thousand dollars, yet I think that sum too small to fortify, efficiently, our extended seacoast; but I suppose it is as much as can be economically and advantageously expended in one year.

I believe the policy this nation has pursued ought to be abandoned. I do not mean to criminate the Administration. I believe the Government, and those who have administered it, have dealt justly with all nations, expecting national justice in return. I am convinced that national justice and national friendship are idle as the wind that blows, and that there is no such thing as national justice to be expected in times like these. We must depend on our own strength, and not on national justice. Our Government have calculated on preserving peace by pursuing a fair and impartial neutrality, and that those difficulties which might arise between us and any of the European Powers, might be amicably settled and adjusted by friendly negotiation. If we turn our attention to the conduct of the European Powers, the stronger towards the weaker, it will prove incontestably that national justice is at an end. What has been the national justice of France towards Holland, Prussia, all the petty States of Germany, Italy, and in short all the Powers of the continent? It is conquest, dominion, and tearing up by the roots every vestige of civil liberty, and annihilating the national rights of those Powers.

The national justice of Great Britain in India has extirpated every prince and nation in that quarter; and what has been her national justice towards Denmark? History does not give an account of such base conduct as the attack on Copenhagen. America herself has not kept a more fair and impartial neutrality than Denmark. Such is the national justice between the nations of Europe. Notwithstanding the Government of this nation has, with honest sincerity, dealt justly towards all nations, who will seek in vain to find a single act of aggression on our part, let us see what kind of national justice we have received in return. Spain has violated her faith, refused indemnity for spoliations committed on our commerce, actually invaded our territory by an armed force, and her Minister countenanced in insulting our Government and country.

If we turn to France, we shall find she has, under the curtain, pricked up Spain to commit unwarrantable aggressions, and her privateersmen have now and then sung *Te Deum* on board of some of our most valuable merchant ships, and condemned them.

If we turn to Great Britain, we shall find her return of national justice and friendship is by attacking one of our armed vessels and shedding the blood of our countrymen. I will not dwell on this subject of the frigate Chesapeake, so well known. I cannot speak or reflect on the subject without indignation. She has almost ruined our commerce in the Mediterranean seas; she has captured our vessels bound to Antwerp, in French Flanders, and to the ports in Holland, France, and Spain. She has blockaded our harbors, pressed our seamen, violated our territory, added insult to injury and aggression, wounded the pride and feelings of the American people, and endeavored to degrade and injure, in the eyes of the world, our national honor and character.

The policy of trusting to national justice, at the outset, might be proper. It was of importance to have time to gain strength, which this nation just begins to feel; that policy ought now to be at an end; it proves theoretical and visionary. It has long since been necessary to pursue measures of general defence. Neither would I trust too much to gunboats; they are useful auxiliaries, and I will vote for an increase of their numbers. They are good in their place, and so are proclamations, when you have energy and force to compel an observance. I am for trusting no longer to proclamations; they are a conductor of disgrace to the nation. The answer of the commander of the sloop-of-war Driver, while lying in our harbor at Charleston, was insolent and contemptuous. The answer of the commander of the insignificant fleet, yet lying in Lynnhaven bay, was, that they would batter down the town of Norfolk. You always will and must expect to be insulted, unless you pursue the policy of general defence. I hope to see our coast lined with forts and batteries, at suitable and proper places, and our harbors filled with frigates and gunboats, and some block ships; and were it not esteemed heresy by some, I would say a few seventy-four gun ships. Such is my opinion of the necessity and utility of some heavier ships, that I feel it my duty, as a faithful Representative, to express it. Our situation is critical, and our foreign relations are gloomy. The affairs of the nation require serious and grave deliberation, and all our wisdom, but above all, unanimity. Away, therefore, with wretched party spirit and party violence. I do not mean to be understood as giving an opinion that war will be inevitable; I only wish to be prepared for it.

It is a correct maxim that nations will pursue that course which is most for their interest, and would the men now in power in Great Britain look forward for years to come, they would say their interest was peace with the United States of America; but it is to be recollected, that those men in power calculate on the termination of that power forever on the death of the King, which they believe from the infirmity of his age will soon happen; they, therefore, calculate for the moment.

To Congress the nation turn their eyes, justly expecting we will afford them protection—upon

which they place their hope for public security—which will give confidence and vigor to the nation. Our rank and station will be decided among the Powers of Europe by the vote we give this day. Let us behold this nation, at this alarming crisis, looking boldly the nations of the earth in the face, by appropriating liberal means for a spirited and permanent plan of defence. The propriety and necessity of adopting measures for fortifications, appear to me to be universally allowed, not only among the European Powers, but is the sense of this nation, as far as I can judge. The Legislature of the State of New York, by their resolutions now on your table, signed by the President of their Senate and Speaker of the House of Representatives, have invited and requested the attention of Congress to this important subject, and immediate steps ought to be taken to make ample provision for that purpose. The community in general are alive to the subject; the people of this country are jealous of their rights, and are disposed to defend them. The system of permanent fortifications ought, from its nature, to be the greatest care of the Government. It is a system upon which rests the security of national defence. In case of war, the situation of the nation must be calamitous, indeed, for the want of fortifications. The history of all civilized nations will prove, that fortifications were and still are part of their valuable system of defence; and that they have and do keep fortified their most important cities and towns. This system has been uniformly practised, and encouraged by the most brave, powerful, and experienced nations. Let us, therefore, resort to that experience and observation, and lay aside useless theory. At both of the sessions of the last Congress, the subject of fortifications was urged for consideration, and voted down. Are we willing to take upon ourselves the hazard of the calamitous consequences that may happen to the nation, and stand responsible to our constituents and posterity, by a repetition of the same vote? I am not. If we take a view of the relative situation of the European Powers, their strength, their resources, their objects, and prospects, we shall have but one feeling; we shall pay a due regard to self-defence, and shall be in a state of preparation for events.

Mr. SMILIE observed from what had been said by the gentleman from New York on this subject, he thought the House would not accommodate him with such a sum as would please him. When the gentleman contemplated such great preparations for fortifications, had he cast a single thought on the means now in our possession? Did he believe that all they could spare, if solely applied to fortifications, would be sufficient to effect the object he appeared to have in view? If he did, Mr. S. did not. It signified nothing to be talking about the injuries they had received. They were in a critical situation, and all sensible that they ought to exert themselves; they might differ with respect to the money necessary to be applied for fortifications, but he took it for granted that there was not a man in the House who was not willing to prepare for defence. He was willing to apply money for the purpose of fortification; but there were also other means of defence necessary. Had the gentleman thought at all on what appropriations might be necessary for the military? If they had war, they must have a large army, and a large sum of money must be applied for its support. Now would any gentleman pretend to say, that by taking $1,500,000, or a larger sum, for the purpose of fortification, that they would have sufficient means left for other purposes of defence? He thought not; because if they had war, although it would be a war in their own defence, they must act on the offensive in one quarter, and if they did, it must be seen how improper it would be to weaken themselves, so as not to leave the necessary sum for that purpose. A stranger hearing the gentleman from New York (Mr. GARDNIER) talk on this subject, might suppose that the House had no disposition to fortify, and the gentleman had said, that if they now refused to fill up the blank, he should doubt their sincerity. Would the gentleman say that he had more at stake than any other gentleman in the House? He presumed not; and if not, why should the gentleman doubt that the House would act when the proper time came. With respect to the city of New York, Mr. S. was well disposed to give her enough to put her in a state of defence; though he did not agree with the position of the gentleman, that our cities were the sources of wealth and support of Government. Mr. S. thought the cultivators of the soil were the supporters of the Government. Between the two descriptions of men, he would say, and he hoped he was not going beyond the mark when he said it, that the cultivators of the soil were at least as necessary to the country as the merchants who exported their produce; who were but the hand, as it were to the great body of the community. He did not mean, in what he had said and was about to say to intimate anything against the merchants, whom he considered as a respectable class of citizens; but this they all knew, that if there were no such things as ships belonging to the United States our produce would be exported, and our farmers could support themselves. He was sorry that the chairman had moved to fill up the blank. If the question were taken, he should vote in favor of the sum proposed by that gentleman; yet he thought it necessary to reserve some part of their treasure for carrying on war in other quarters than in their ports.

Mr. NEWTON would not now enter at large upon the subject, because it appeared to him that there was no hostility to the principle of the resolution from any part of the House; he thought it was improper at this time to fill up the blanks in the bill; he thought so because it was contrary to the course hitherto pursued, and they were now entering upon that subject which should properly be discussed in Committee of the Whole on the bill.

Mr. GARDENIER said that when a question of such deep interest, of such great importance, was agitated, it would be well, he entreated gentlemen to repress their passion for personal altercation

The subject was too interesting, too momentous, to permit him to go out of his way, to switch any body who might have taken it into his head to be impertinent to him. It might be, he said, that when he was first up, he had not couched his demands of fortification and protection in the courteous style of entreaty. Coming in to that House with all the feelings and all the earnestness of the people he represented, he could not beg from the charity of the Government, that which he had a right to demand from its justice; that which had been denied hitherto, and the necessity of granting which, the perilous state of the country now rendered evident, and indisputable. The gentleman from Pennsylvania (Mr. SMILIE) had inquired whether he (Mr. G.) was more interested than others. I am not acting here, said Mr. G., in my individual capacity, I am here a Representative of the State of New York, and as such, the interest I have in this matter is of the very first importance, of the very first magnitude. The gentleman from Pennsylvania (Mr. SMILIE) had represented him as expressing doubts of the patriotism of the House. Not so. He did not see, that because he pressed, and even with zeal, his demands for protection, that he was, therefore, to be considered to doubt the patriotism of those whom he addressed. Quite the reverse. He, who claims right, should descend neither to the attitude of humility, nor to the language of supplication. Again, the same gentleman had endeavored to make him say, that the cities were the source of wealth. He had said no such thing. He had said the cities were the sources from which all our revenue flowed directly into the national treasury, and that they ought for that, if no other reason, to be the first object of our care. They were of all parts of the Union the most vulnerable; they were the hens that laid the golden eggs, and ought to be, therefore, cherished and protected with peculiar solicitude. He hoped and trusted that no unnecessary delay would take place. The people of your cities, said he, are anxiously awaiting your decision. Their fortunes and their lives may at some period, and probably not a distant one, depend on the magnitude of the appropriation you are about to make. Whether the present negotiations eventuate in war, or in peace, their rights and your duty is the same. Suppose that by some miracle we should be snatched from the precipice at this time, can we flatter ourselves (he asked) with an eternal exemption from the calamities of war? Shall we flatter ourselves that that will be allowed to us, which never yet was allowed to the most favored people, an uninterrupted peace? If not, are we willing, can we answer it to our country if with our present experience we subject ourselves to be caught again in the same condition we are now, without fortifications, unprotected and defenceless? If we were to delay vigorous measures, we might continue to delay till the present temper of the nation was frittered away by negotiations and discussions running into endless details. Why should not that happen again which had happened already? Had not, he asked, the actual territory of the United States been invaded by Spain. And had it not been negotiated and treated upon year after year, till at last there remained perhaps not more than one in fifty of our countrymen, who remembered that we had at this very moment a just cause of war against Spain?

Sir, said he, now is the propitious moment. At this crisis, every one will join us, in advocating the necessity of fortifying our ports and harbors. The nation will now bear to have large appropriations made for this great and important purpose. The people will be pleased now, if you proceed with alacrity, and the popularity of the Administration will not be endangered by the measure. Every reason, therefore, every argument was decidedly in favor of celerity and fortunately no less so in favor of liberality.

The gentleman from Pennsylvania (Mr. SMILIE) had asked where are our means? Our means, sir? (said Mr. G.) Our means are in the wealth, in the resources of our country, and in the stout hearts of our countrymen. These are the means which established, these are the means on which we may safely rely to perpetuate the independ- of the American nation. Let us go on, then, to the work—for once let the national treasure be expended for the national defence. If we do not enter upon it now, we probably never shall. We shall continue to wait like the eagle in the fable, who did not build a house when the sun shone, because then he did not want it—nor when the storm raged, because then he could not do it.

He concluded with moving, in order to try the sense of the House, to fill up the blank with four millions.

Mr. QUINCY said, the gentleman from North Carolina (Mr. BLOUNT) had, with his usual candor, answered the inquiries which had been made as to the views of the committee. He did not rise now to make observations on the different sums proposed, but merely to know of the chairman of the committee the species of information which had induced the committee to fix on the sum of $750,000. He understood from the chairman and another gentleman, who was a member of that committee, that they had not the sums in detail as related to each particular port, but only the sum in gross. He observed, that in the report of the Secretary of War, there were two classes of ports or harbors mentioned as requiring fortification, those called more important, and those of minor importance. If the blank were filled with $750,000, it would only average about $17,000 to each port mentioned: now he conceived that every port which required fortification, would require more than that. He wished to know if information on the subject existed anywhere, so that it might be procured. Some observation had been made by the chairman as to what might be expended in a year, and he had said that no more than $300,000 could be conveniently expended in a year in case of peace. If they were to suppose that only the fifteen mentioned, as ports of the most importance, were to be fortified during this year, it would be but $50,000 for each. Was it possible that more could not be expended?

Mr. Blount said that gentlemen had predicated their arguments on a supposition that the sum of $750,000 was the whole sum intended to be applied, for the purposes of defence. This was not the case; many millions had been heretofore appropriated for fortifications. It was known that cannon and other implements necessary for fortifications had been paid for and conveyed to the places where fortifications were to be erected. The proposed sum was only intended to defray the expenses of the naked walls. The system of fortifications embraced gunboats also. The sum of four millions might be called for, but not for this species of fortifications alone. The gunboats intended to form a part of the system of defence would cost, to build and employ them, $2,500,000. The Secretary of War had given to the committee a general statement of what sums of money might be required for fortifications, within certain distances, to wit:

For New Orleans - - - -	60,000
Georgia, South and North Carolinas -	252,000
The Chesapeake and its waters - -	160,000
Delaware Bay and river, New Jersey and New York - - - -	211,000
Connecticut and Rhode Island - -	31,000
Old Massachusetts, New Hampshire and the district of Maine - -	135,000
	$849,000
Other places, not mentioned - - -	25,000
Making altogether - - - -	$874,000

Mr. B. added, that when they considered that the appropriations of last year were applied, as the President had told them, to New York and New Orleans, the sum contemplated to erect the bare walls of fortifications was sufficient to satisfy the gentlemen themselves. He admitted that cannon had been already provided, and this was but a part of the system; the other part of the system, to wit, gunboats, would require a much larger sum to prepare them and support them in service for six months.

Mr. Alston trusted the Committee were now fully satisfied that they were not ready to fill the blank. He wished the House to proceed as they had heretofore done, and not fill the blank till the bill was reported, when they would have documents before them, and be much better able to judge of the proper sum. If gentlemen differed with the Secretary of War, with regard to the sum, they could then be better able to decide. Were they to fill the blank now they would only have to go over the same grounds again when the bill was brought in.

Mr. Thomas said, that during a former session, a committee reported a blank resolution for fortifications, as had been done in this case. The Committee of the Whole precipitately filled the blank with a certain sum, although afterwards, on more nature consideration, a much larger appropriation was made. They had heard much of the proper sum: if he were satisfied that the blank would be filled with an adequate sum, he would have no objection to do it at this time; but if otherwise, he should be opposed to it, because the appropriation for this object would show whether they were prepared to meet the event of war or not.

Mr. Cook hoped that the Committee would not agree to fill the blank at this time, or till they got further information. He wished to see a particular statement of the expense of each particular part of the system. Perhaps the amount that might be appropriated for putting our ports and harbors in a state of defence, might have a considerable influence on the people as to the question of peace or war; it would have that influence on his mind. A gentleman from New York had proposed $1,500,000, and acknowledged this was less than it ought to be. If they adopted the resolution as it now stood, they pledged themselves to the people to fill it with such a sum as might be commensurate with the object. The gentleman from Pennsylvania had said something with regard to the cultivators of the soil; it must be known to that gentleman that every part of the community was equally entitled to protection; the cultivators of the soil not more than any other. The mercantile class were, as the gentleman had said, the hand of the community, and equally necessary to the good of the whole. It had been said that if $750,000 were taken for the bare walls of fortifications, it would not leave enough for other parts of a system of defence or offence. Mr. C. said the only question now to be considered was, would they resist the insults and spoliations of foreign nations? Let us, said he, resolve upon resistance; and if we determine upon that, the sum in the Treasury should have no influence upon us as to the extent of our operations.

Mr. Witherell thought, from what he had heard, that the chairman of the committee had produced to the House every fact within his power. When the Secretary of War was invited to an interview with the committee, Mr. W. himself asked him, if he could say what specific sums were necessary for special points; he answered, that he thought it was impossible to state them. Although he had taken every possible means to inquire into the expenditure which might be necessary, yet, when the engineers came to work upon the fortifications, their view might vary from his, and it was impossible to say anything near the precise sum; but that whatever surplus remained from one part might supply the deficiency in another. This was all the information communicated to the committee. He therefore hoped the blank would not be filled up now, as there was no immediate necessity for it, and it could be done more properly in the bill.

Mr. Quincy said the reason given by the gentleman from Vermont was a very good one to show why the appropriation should be general. But the Committee would perceive and consider whether it was not absolutely necessary, in order to enable them to do justice in this vote, that there should be before them a calculation from official sources, such an one as might hereafter be referred to. If it were not in the power of the Secretary of War to give a full statement, such an one

as was in his power, He made these observations that some gentleman might—if no other gentleman did, he would—move that the Committee should rise, in order to ask for information. He wished every port in the United States, large and small, to have its portion of the money expended; he wished all this money should be laid out well, and that every portion of our citizens might know what protection they were to receive, and what they might expect.

Mr. TALLMADGE confessed that he was opposed to filling up the blank at present, as recommended by the committee, without further information. He therefore inquired whether it would be in order at this stage of the business to move the previous question, whether the blank should be filled or not.

From the general objection that appeared to filling the blank at present, Messrs. GARDENIER, MASTERS, and BLOUNT, withdrew the respective sums they had proposed; and the resolution was then agreed to without a division.

The second resolution being under consideration—

Mr. BLOUNT said he would not now move to fill the blank in this resolution, because he foresaw there would be as much time spent in discussion of the number of gunboats to be built, as had taken place on the sum for fortifications; and he did not wish the progress of the business to be impeded. When a bill was brought in, a discussion might take place on the details.

The second resolution was then agreed to—yeas 93.

The Committee now rose, and the House agreed to the resolutions.

Ordered, That a bill or bills be brought in, pursuant to the said resolutions; and that Mr. BLOUNT, Mr. CHANDLER, Mr. BURWELL, Mr. GOLDSBOROUGH, Mr. RIKER, Mr. TROUP, and Mr. WITHERALL, do prepare and bring in the same.

TUESDAY, December 1.

Mr. QUINCY offered the following resolution:

Resolved, That the Secretary of the Department of War be directed to lay before this House an account of the state of the fortifications of the respective ports and harbors of the United States, with a statement of the moneys appropriated for fortifications remaining unexpended; and an estimate of the sums necessary for completing such fortifications as may be deemed requisite for their defence.

Which being under consideration,

Mr. Q. said, the House would perceive the object of this resolution was to obtain information; there was a document on their table which gave some information on the subject, but was not explicit. This resolution was exactly similar to one passed last session, by which the House obtained some important and interesting information; this being the case, he hoped no objection would be made to it.

The resolution was agreed to without a division.

On motion of Mr. LEWIS, the House went into Committee of the Whole on the report of the committee to whom was recommitted the bill for erecting a bridge over the river Potomac. Having fixed sixty years as the term of the corporation previous to the right of the United States to purchase the bridge, the Committee rose, and the bill was ordered to a third reading to-morrow.

Mr. BLOUNT, from the committee appointed on the thirtieth ultimo, presented a bill supplementary to an act, entitled "An act for fortifying the ports and harbors of the United States, and for building gunboats," which was read twice and committed to a Committee of the Whole on Thursday next.

The House resolved itself into a Committee of the Whole on the bill to change the name of the District of Biddeford and Pepperelborough, in Massachusetts, to that of Saco and Biddeford. The bill was reported with several amendments thereto; which were twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the report of the select committee appointed to prepare and report such standing rules and orders as are proper to be observed in this House; and, after some time spent therein, the Committee rose and had leave to sit again.

SOLDIERS OF THE REVOLUTION, &c.

Mr. RANDOLPH rose and said, that as long as the subject of national defence was in possession of a respectable committee of the House, and as long as their report was pending before it, he had deemed it, if not improper, at least unavailing in him, to offer anything upon that subject. But, that committee having reported, he saw, from the course which the debate had taken yesterday, a necessity, so pressing that he could no longer dispense with it, for offering some propositions on this most important subject. These propositions grew out of the almost universal impression which seemed to exist that there was but one peculiar mode of defence to which the nation could turn itself in this perilous juncture of their affairs. When so great an appropriation was demanded for this favorite expedient, he feared, that if other plans of defence, which had at least as high claims to the public attention, were not now brought forward, they might hereafter find an empty Treasury, and be compelled to resort to the system of loans, recommended by the head of that department, as the only means, however precarious, of providing for them.

It had always been his opinion, that whether in war or in peace, there was one system of national defence which ought sedulously to be cherished, and concerning which there could not exist a contrariety of opinion between any two men in that House, or out of it; and he had hoped that the attention of the committee, (for there were more than one) would have been directed towards it. Were they not told, and was it not self-evident, that if matters came to the last extremity we should not only have an extensive

frontier exposed to the inroads of the enemy's continental possessions, but that a vast line of country, from Detroit to Natchitoches, would have the native savages let loose upon their dispersed and almost defenceless population? Did there exist then no necessity for defence but of a few places on the coast, the depots of privileged wealth, when the whole line of back settlements were left at the mercy of the enemy and their savage adherents, without a force, even upon paper, to protect them? If it should be said that there existed no obligation on the Union gratuitously to bestow arms upon the individual States, which had failed to furnish themselves, the same reason would apply yet more forcibly to the fortification of States which had neglected to provide that species of self-defence. In the one case the arms issued were still the general property, at all times disposable for the good of the whole; in the other, the fortifications were so much real estate, vested in the country where erected; fixtures to the freehold. It appeared to him that, whether they considered themselves to be in a state of profound peace, or on the eve of war, or (as he feared would prove to be the case) in actual war, it behooved them to arm the natural defence of their country; to rely, as had been said by a gentleman from New York, not upon delusive theory but established practice; upon that which, heretofore, had carried them triumphant through danger, and upon which, when they could no longer depend, there was an end of our existence as a nation.

There was another subject, to which he hoped the Committee would also have turned their attention, one on which, as on the first, no two men could differ; not like gunboats, perishable in its nature, and susceptible of dispute as to its utility, which remained to be tested by experience; a train of formidable artillery, that might not only oppose the enemy in a particular harbor, but calculated to change its position, to bear upon his armed vessels wheresoever they might lie, to compel him to quit our waters, and even, if he should effect a landing, confront him under any possible change of circumstances. He was the more inclined to hope, that his opinion would prevail upon this subject, when he heard a gentleman whose influence was almost decisive in that House—he trusted that it was deserved—declare that terra firma was our natural element, that it was madness to dream of coping with the enemy, on his own vantage ground; and yet all the provision, which they had thought of making, was to fight him with his own weapons. He reminded the House with what striking effect his friend from Maryland, (Mr. R. NELSON,) whose military experience entitled him to peculiar weight in this matter, had on a former occasion cautioned them, that erect what fortifications they might, the enemy were not obliged to lie before them; that ships of war were a moveable force on the water, and to be resisted with effect must be opposed by a moveable force on the land.

These were the two leading measures which were impressed on his mind as proper to be adopted. Muskets in the hands of our citizens, and cannon in our arsenals, were so much national wealth, even exclusive of the idea of present national danger. The uses to which they were to be applied under any possible emergency, were not susceptible of dispute. No man could arraign this as a visionary plan of defence, as had been done with respect to gunboats and fortifications. Upon them however he should say nothing at present, except that he thought his the preferable mode of defence, and one entitled to be provided for, before the Treasury should be drained for less worthy purposes.

But there was another and more important measure, which ought to precede any step which the House might take for defence. It was a measure of justice; which would not only entitle them to success, but was eminently calculated to insure it; a measure which would unite all hearts, and nerve every hand in the cause of their country. It would do away the stigma of suffering those who had fought and bled in their service, to starve in the streets. With what face could the Government call upon the youth of the nation to turn out in the public defence, when their eyes were every where assailed by the spectacle of their countrymen and kindred, veterans of the Revolution, who had raised the proud fabric of our independence, begging from door to door a morsel of bread? It was impossible to contemplate the condition of these gallant men, who, after giving to their country everything, were consigned by it to beggary and want, without sensations of indignation and shame, as well as of commiseration. But it is a subject, said Mr. R., on which I will say no more; I cannot supply feelings to those who are destitute of them; and I should as soon undertake to raise the very dead as to excite those whom the subject itself is unable to move. He concluded by offering three resolutions, calculated to meet the objects he had in view, professing himself, at the same time willing to submit to any amendment, which did not alter their substance.

Before he handed these resolutions to the Chair, Mr. R. said, he would obviate an objection which might be made to the first; that they had already a law to provide for these persons. To the disgrace of the statute book, they had a pension law. What was the provision? That a man who had incurred disability by known wounds during the Revolutionary war, after being tied down to the most minute proofs, which in most cases, from the death or removal of his old companions in arms, he was unable to give, although the fact might be of general notoriety, was, if he could surmount all the difficulties thrown in his way, entitled to a miserable annuity, to take date, not from the time when the disability occurred, but from the time when his claim should be established. So that the man whose keen sensibility had restrained him from applying to the public for relief, who had struggled on, in the hope of better days, till the last gasp, was put off with a pension, which so far from discharging the petty debts which he might have contracted previous to his application, would hardly keep soul and body together; when,

if his pension were to take date from the time of the service being rendered, as in common justice it ought to do, he might be placed in comparatively easy circumstances.

Mr. R. then submitted to the House the following resolutions:

Resolved, That provision ought to be made, by law, for an adequate and comfortable support of such officers and soldiers of the late Revolutionary army, as are still existing in a state of indigence, disgraceful to the country which owes its liberties to their valor.

Resolved, That provision ought to be made, by law, for arming and equipping the whole body of the militia of the United States.

Resolved, That provision ought to be made, by law, for procuring a formidable train of field artillery for the service of the United States.

The resolutions were referred to a Committee of the whole House to-morrow.

WEDNESDAY, December 2.

ANOTHER member, to wit: from Delaware, NICHOLAS VAN DYKE, appeared, produced his credentials, was qualified, and took his seat in the House.

The SPEAKER laid before the House a letter from the Secretary of the Navy, communicating a statement, marked (A.) exhibiting the amount of the purchases and supplies made on behalf of the United States, by the Navy Agents in the different ports, for three years ending the thirtieth of September last, together with the emoluments, commissions, or salary, of the respective agents; also, the amount expended by them, respectively, in the same years, on other objects of expenditure, on account of the Navy; in pursuance of a resolution of this House of the sixteenth ultimo; which were read, and ordered to lie on the table.

On motion of Mr. PARKE,

Resolved, That the committee appointed on so much of the Message of the President of the United States as relates to our intercourse with the Indian tribes, be instructed to inquire whether any, and, if any, what, alterations ought to be made in the act, entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers;" and that they have leave to report by bill, or otherwise.

Mr. JOHNSON presented a petition of Daniel Boone, now an inhabitant of the Territory of Louisiana, praying that a title, in fee simple, to a certain tract of land on Missouri river, may be confirmed to the petitioner for the reasons therein specified.—Referred to the Committee on the Public Lands.

An engrossed bill to change the name of the district of Biddeford and Pepperelborough to that of Saco and Biddeford, was read the third time, and passed.

A message from the Senate informed the House that they have passed a bill, entitled "An act for the preservation of peace and maintenance of the authority of the United States, in the ports, harbors, and waters, under their jurisdiction."

Mr. MILNOR offered the following resolution:

Resolved, That three hundred and fifty copies be the number of all such papers as may be ordered by this House to be printed for the use of the House, unless otherwise ordered by the House.

After some conversation, on this resolution, between Messrs. MILNOR, DANA, D. R. WILLIAMS, and SOUTHARD, the motion was negatived—ayes 39.

Mr. DAWSON made the following report:

The committee to whom was referred that part of the President's Message which relates to our Military and Naval Establishments, &c., beg leave to make the following report, in part:

1. *Resolved*, That it is expedient to increase the Military Establishment of the United States by raising —— regiments of infantry, to consist of —— men each; —— regiments of artillerists of —— men each; —— regiments of riflemen of —— men each, and —— regiments of cavalry of —— men each.

2. *Resolved*, That it is expedient to increase the Marine Corps by raising —— additional number of men.

3. *Resolved*, That provision ought to be made by law for the speedy equipment of all the frigates and other vessels of war belonging to the United States. To render the Establishment more effectual that —— ships, of —— guns each, be built.

This report was referred to a Committee of the Whole on Monday next.

POTOMAC BRIDGE.

An engrossed bill authorizing the erection of a bridge over the river Potomac, within the District of Columbia, was read the third time. And, on the question that the same do pass, it was resolved in the affirmative—yeas 85, nays 43, as follows:

YEAS—Lemuel J. Alston, junior, Ezekiel Bacon, Joseph Barker, Burwell Bassett, Wm. W. Bibb, John Boyle, William A. Burwell, William Butler, Joseph Calhoun, Peter Carlton, Epaphroditus Champion, Martin Chittenden, Matthew Clay, John Clopton, Howell Cobb, Jacob Crowninshield, John Culpepper, Richard Cutts, Ezra Darby, Josiah Deane, Joseph Desha, William Ely, James Fish, Meshack Franklin, Barent Gardenier, Francis Gardner, James M. Garnett, Peterson Goodwyn, Edwin Gray, John Harris, William Helms, Daniel Ilsley, Richard M. Johnson, Walter Jones, Thomas Kenan, William Kirkpatrick, Nehemiah Knight, John Lambert, Joseph Lewis, junior, John Love, Matthew Lyon, William McCreery, Nicholas R. Moore, Thomas Moore, Jonathan O. Mosely, Gurdon S. Mumford, Thomas Newbold, Thomas Newton, Wilson C. Nicholas, John Porter, John Pugh, Josiah Quincy, John Randolph, John Rea of Pennsylvania, Jacob Richards, Samuel Riker, John Rowan, John Russell, Lemuel Sawyer, Ebenezer Seaver, Dennis Smelt, Henry Southard, Richard Stanford, William Stedman, Clement Storer, Lewis B. Sturges, Peter Swart, Samuel Taggart, Benjamin Tallmadge, John Taylor, David Thomas, John Thompson, Abram Trigg, George M. Troup, Jabez Upham, James I. Van Allen, Philip Van Cortlandt, Nicholas Van Dyke, Archibald Van Horne, Killian K. Van Rensselaer, Jesse Wharton, Marmaduke Williams, Alexander Wilson, Richard Winn, and James Witherell.

NAYS—Willis Alston, David Bard, John Blake, jun., Thomas Blount, Robert Brown, George W. Campbell, John Campbell, John Chandler, Samuel W. Dana,

John Davenport, jun., John Dawson, James Elliot, John W. Eppes, William Findley, Isaiah L. Green, John Heister, William Hoge, James Holland, David Holmes, Benjamin Howard, Robert Jenkins, Philip B. Key, Edward Lloyd, Nathaniel Macon, Robert Marion, Josiah Masters, William Milnor, Daniel Montgomery, jr., John Montgomery, Jeremiah Morrow, John Morrow, Roger Nelson, Timothy Pitkin, junior, John Rhea of Tennessee, Matthias Richards, James Sloan, John Smilie, Jedediah K. Smith, Samuel Smith, John Smith, Robert Whitehill, Isaac Wilbour, and David R. Williams.

MISSISSIPPI TERRITORY.

The House proceeded in the third reading and further consideration of an engrossed bill extending the right of suffrage in the Mississippi Territory, and for other purposes; and, on the question that the said bill do pass, it was resolved in the affirmative—yeas 73, nays 55, as follows:

YEAS—Lemuel J. Alston, jun., Willis Alston, Ezekiel Bacon, Joseph Barker, John Blake, junior, John Boyle, William A. Burwell, George W. Campbell, Peter Carlton, Epaphroditus Champion, John Chandler, Martin Chittenden, Matthew Clay, Jacob Crowninshield, John Culpepper, Richard Cutts, Ezra Darby, Josiah Deane, Joseph Desha, James Elliot, John W. Eppes, William Findley, James Fisk, Meshack Franklin, Isaiah L. Green, John Harris, John Heister, William Helms, William Hoge, James Holland, David Holmes, Benjamin Howard, Daniel Ilsley, Robert Jenkins, Richard M. Johnson, Thomas Kenan, Nehemiah Knight, John Lambert, Edward Lloyd, John Love, Matthew Lyon, William Milnor, Daniel Montgomery, jun., John Montgomery, Nicholas R. Moore, Jeremiah Morrow, John Morrow, Roger Nelson, John Porter, John Pugh, Josiah Quincy, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Matthias Richards, Samuel Riker, Ebenezer Seaver, James Sloan, John Smilie, Jedediah K. Smith, John Smith, Henry Southard, Clement Storer, Lewis B. Sturges, Peter Swart, David Thomas, John Thompson, Jabez Upham, James I. Van Allen, Archibald Van Horne, Jesse Wharton, Marmaduke Williams, and James Witherell.

NAYS—David Bard, Burwell Bassett, William W. Bibb, Thomas Blount, Robert Brown, William Butler, Joseph Calhoun, John Campbell, John Clopton, Howell Cobb, Samuel W. Dana, John Davenport, junior, John Dawson, William Ely, Barent Gardenier, Francis Gardner, James M. Garnett, Peterson Goodwyn, Edwin Gray, Walter Jones, James Kelly, Philip B Key, William Kirkpatrick, Joseph Lewis, junior, Nathaniel Macon, Robert Marion, Josiah Masters, William McCreery, Thomas Moore, Jonathan O. Mosely, Gurdon S. Mumford, Thomas Newbold, Thomas Newton, Wilson C. Nicholas, Timothy Pitkin, jun., John Randolph, John Rowan, John Russell, Dennis Smelt, Samuel Smith, Richard Stanford, William Stedman, Samuel Taggart, Benjamin Tallmadge, John Taylor, Abram Trigg, George M. Troup, Philip Van Cortlandt, Nicholas Van Dyke, Killian K. Van Rensselaer, Robert Whitehill, Isaac Wilbour, David R. Williams, Alexander Wilson, and Richard Winn.

PUNISHMENT OF CERTAIN CRIMES.

Mr. J. MONTGOMERY offered the following resolution:

Resolved, That a committee be appointed to inquire whether any, and, if any, what, amendments are necessary to the laws for the punishment of certain crimes against the United States, and to report by bill, or otherwise.

Mr. M. said, he was induced to bring forward this resolution from an occurrence which had taken place in the State of Maryland. The ship Othello, of the port of Baltimore, had been attacked and captured by a pirate, who afterwards thought proper to release her, after which she arrived in safety in port. The circumstance occasioned considerable irritation in the city of Baltimore, and a number of gentlemen went out from Baltimore, equipped for the purpose, and took the privateer. The case was examined before the district judge of Maryland, and Mr. M. had in his possession the opinion on the case, which had been transmitted to the Executive of Maryland, by the district judge, which stated that the courts of the United States had not cognizance of this crime. The judge informed the Executive of the State that they were remanded to Calvert county for trial, and the State of Maryland had gone so far as to inquire of a gentleman of the law of considerable eminence in the State of Maryland, as to the proper tribunal, who declared that neither the courts of the United States nor of Maryland had cognizance of the offence. In consequence, the court of Calvert county, when the case was brought before it, as it had no cognizance, discharged the prisoners, who were now at large. This was an offence which ought to be punished somewhere, and as no court had cognizance, jurisdiction ought to be extended for the purpose. This was the intention of the resolution. The House would perceive that this was a case of great importance to the commercial interests of the city of Baltimore; as the law at present stood, a man who committed a robbery on the high seas could be punished for the offence, but a man who committed piracy in a picaroon in Chesapeake Bay was not amenable to the law.

Mr. J. RANDOLPH said he should certainly have no objection to any amendment of the penal laws within the cognizance of Congress; but, from what he could collect of the meaning of the gentleman, at such a distance, it was contemplated to legislate over the waters of the Chesapeake Bay, which were not within the jurisdiction of Congress. Suppose it were proved to the House that from some deficiency in the municipal law of a State, or the administration of the law, that a foreigner was going at large after having been arraigned, or was set at liberty for a want of jurisdiction, would that justify the House in legislating for a district within the body of a State? And surely the gentleman was sufficiently acquainted with the laws of the country to know that Virginia and Maryland had concurrent jurisdiction over the waters of Chesapeake Bay, and that no other power on earth, but those States, could legislate on that subject.

Mr. J. MONTGOMERY certainly did not expect any objection would have been made to this resolution. He had not submitted a resolution to declare that there was a defect in the laws, but to inquire whether there was any. The gentleman

misunderstood him, in supposing that he had invited Congress to legislate over Chesapeake Bay; his object was to obtain a revisal of the criminal code, and a remedy of its defects, if it should appear that there was no court which had cognizance of this offence.

Mr. RANDOLPH was still of opinion that this motion had not been made in the proper place, which was the Legislature of Maryland and not the Legislature of the United States. The gentleman had prefaced his resolution by saying that the offence had been committed on the waters of the Chesapeake Bay, and that there existed no legal mode of redress. Suppose the gentleman had said that the offence had been committed in the town of Baltimore, would it not have been asked, what the United States had to do with the town of Baltimore? The United States had as much jurisdiction in the one as in the other, and none in either, except in special cases.

Mr. QUINCY hoped this resolution would be passed. The ideas of the gentleman from Virginia did not appear to him to be altogether correct. The extent of the powers of this House, as specified by the Constitution, was, "to define and punish piracies committed on the high seas, and offences against the laws of nations." Unquestionably the piracy committed in Chesapeake Bay, would not come under the first clause of this sentence; but if an offence would come within the second clause, being an offence against the law of nations, it was proper that the House should inquire into it. The House would readily see the propriety of this power being lodged in Congress; because if any force of another nation were to come within the body of a State, it was in the power of that State, by neglecting to provide for their punishment, or expulsion, to commit the national safety. It appeared to him, therefore, that Congress had cognizance of any offence whatever against the law of nations within the United States.

Mr. KEY hoped they might have an opportunity of going further into a discussion on this subject. He conceived, with the gentleman from Virginia, that it was unnecessary, and he now thought Congress incompetent to legislate on this subject. If Congress were competent, the Legislature of Maryland was also competent. A jurisdiction of this kind had existed in the State of Maryland; she had a General Court, whose jurisdiction had extended over the whole State, and included the waters of the Chesapeake. Four years ago that court, and the jurisdiction which had always been exercised by it, was destroyed; and it was conferred on the county courts, which previously possessed jurisdiction over those rivers which flowed through their respective counties; but the Bay of Chesapeake had been exclusively within the jurisdiction of the General Court. To ascertain what authority now possessed jurisdiction, the resolution had been introduced to the House. If gentlemen thought, as he trusted they would, that Congress had only concurrent jurisdiction, they would yield the right of legislation on this subject to the State of Maryland.

Mr. MONTGOMERY read extracts from two opinions given on the case by the district judge, and the other person who had been consulted; from which, he presumed, gentlemen would be satisfied that this was a proper subject for the consideration of the House.

The resolution was agreed to without a division, and the following gentlemen appointed a committee accordingly: Messrs. J. MONTGOMERY, QUINCY, NICHOLAS, MACON, DANA, VAN ALLEN, and TROUP.

SOLDIERS OF THE REVOLUTION.

The House went into Committee of the Whole on the resolutions offered by Mr. RANDOLPH yesterday; and the first resolution being under consideration as follows:

Resolved, That provision ought to be made by law for an adequate and comfortable support of such officers and soldiers of the Revolutionary army as are still existing in a state of indigence, disgraceful to the country which owes its liberties to their valor.

Mr. RANDOLPH said he trusted that on this resolution there would exist in the House, as there did in the nation, but one sentiment. Whatever might have been the provision heretofore made for those who had spent the best part of their lives, wasted their fortunes, and destroyed their constitutions in their country's service, during the late war, every one would allow that it was neither adequate—

[There being at this time a considerable noise, Mr. R. sat down. The Chairman, having commanded order, requested Mr. R. to proceed.]

Mr. R. did not know that there was any propriety in his rising again. There surely could be no occasion to address a deliberative body which was not disposed to hear; indeed he scarcely felt himself entitled to speak. He had been more than once astonished at the indelicacy of gentlemen who would persist in obtruding their observations upon the House when it was unwilling to listen to them; he did not feel inclined to practise what he had condemned in others. He had little to say, nor should he have troubled them with that little, if he had not known that it was expected of the mover of a proposition to say something in support of it. The provision which had been made for the officers and soldiers of the Revolution was notoriously scanty and mean. Who, he asked, enjoyed the carrying trade for which, two years ago, we were near being plunged into a war? Emigrants since the peace of 1783. Men who ran no risk—who put nothing to hazard—whilst those who met the enemy in the field, with the gibbet staring them in the face at the same time, were left to pine in want and obscurity. Had the persons who achieved this right to trade with every quarter of the globe less claim to the benefits acquired by their blood than the man of yesterday. But they had no capital for such enterprises. They had sown that others might reap. The very lands which they had won with their swords had become the prey of rapacious adventurers. Should the fruits of the Revolution inure to the sole benefit of those who

never put their persons to hazard, or even spent one dollar for the acquisition of our independence? He reminded the House of the pathetic appeal which had been made on a former occasion by one of its oldest members, (Mr. Van Cortland,) whom he hoped would long enjoy his seat there. "We shall not prove very chargeable to you—there are but few of us left, and they are daily dropping off—you will not be burdened with us long—most of us have broken our constitutions in the public service." Mr. R. hoped that provision would be made for these gallant veterans—living monuments of the ingratitude of their country; that every man who had a claim on the public for services rendered during the Revolution would be made comfortable for life, unless his own misconduct should forbid it.

Mr. Quincy said he did not rise to make objections to the general object of the resolution; but there was one part which he did not think it decorous for the Committee to adopt; he meant the epithet *disgraceful.* He was not prepared to fix a disgrace upon the nation by his vote; if it were true that it was disgraced, he should wish more evidence of the fact than had been exhibited on that floor. Were he even to admit that it was a disgrace, he was not willing to turn the eyes of the world upon the shame of his country. In another point of view he objected to this declaration, as it would, by a strained or forced construction, limit the provision contemplated to be made. He should not offer an amendment to the resolution, because he trusted the gentleman himself would amend it. It would, however, meet his wishes either to strike out the last declaratory sentence, or to strike out the words "disgraceful to the" and insert "in a."

Mr. Eppes rose for the purpose of obtaining information. He wished to know whether the object of the first resolution was to provide for all officers and soldiers of the Revolutionary war who were now in a state of indigence, whether their claims had been paid or not, or whether it was intended to include only the officers and soldiers, whose claims had not heretofore been discharged? Hitherto, in the United States, provision had been made for two descriptions of persons only: those who have actual claims, and those who have a claim on the bounty of the nation from being disabled while in service. The resolution appeared to embrace a new principle, viz: a provision for persons who had no claim on the United States, but being in a state of indigence.

Mr. Randolph said that he did not feel for his resolution that sort of parental affection which authors were supposed to bear towards their works. The language was perfectly immaterial to him, so as it embraced his object. He thought it needless in a matter of this kind to attend to those verbal niceties with which the gentleman from Massachusetts had amused himself and the Committee. So far from disgracing the country, he thought the acknowledgment in question the first step towards wiping off the stigma—a sort of atonement; and if the nation was disgraced, it was their duty as faithful servants to tell her so, and not to flatter her with the success of her arms, and persuade her that she was the very mirror and pink of chivalry, when they knew to the contrary.

It was possible, Mr. R. said, that but for the interruption which the Chairman's duty obliged him to make, he might have gone into an explanation of the object of his resolution; but he must confess to his shame that it required nerves of a stronger texture than he possessed to meet undismayed an occurrence of that kind. He thought, however, the resolution spoke for itself. It was matter of notoriety, and as such it was proper for the House to act upon, that there existed a great number of citizens in this nation in a state of indigence, who, if their country had done its duty, might, and probably would, have been in far different circumstances. This failure on the part of Government had thrown the evidences of their claims into the hands of men, many, if not most of them, emigrants since the Revolution. He asked whether our public lands, our free commerce—every blessing of our country—should be participated by those who had sacrificed nothing to our independence, and the men who achieved it be suffered to live and die in wretchedness? This was the question which he had propounded to the House, and those who could not comprehend it in its present shape, would not be assisted by any explanations which it was in his power to give. He knew comparisons were odious, but he must be permitted to make one. He would compare the services of Captains Lewis and Clarke, in exploring the continent to the Pacific ocean, and their remuneration, with the hardships and dangers of the soldiers of the Revolution and their reward. He had no disposition to undervalue the services of those gentlemen and their companions; far from it. He thought them deserving of what they had obtained, and he had voted accordingly. But he should be guilty of gross injustice were he to aver that their labors had been as important to the United States as the services of those who had fought their battles, before they were United States. Yet, what a wide difference in their remuneration! On the one side, ample compensation; on the other, the statute of limitation, or perhaps a scanty pension. Mr. R. wished this subject to be taken up on the broadest ground—that where services could be shown, they should be recompensed—that the State should take the sufferer under her protection, and secure him from want.

Mr. Thomas asked the gentleman who moved this resolution, whether he intended to confine his provisions to the officers and soldiers of the Revolutionary war, and not to extend relief to other sufferers? It was well known that there were many others in the service who suffered equally with those in the Army—some of whom had lost their limbs, and others who performed meritorious services—and were of as much benefit as soldiers. Were they excluded by the resolution? It was but lately that an officer, who commanded one of our armed ships in the Revolutionary war, was in

a state of almost starvation; and there were many more equal sufferers and equally meritorious with those who served in the Army.

Mr. RANDOLPH could only say, that his object was to provide for every man who had fought, whether in the militia, the regular Army, or the Navy.

Mr. QUINCY said, he really had not meant to amuse the House or the gentleman from Virginia by the observations which he had made. In certain cases words were things, and certainly this was one of those cases. Would the Committee declare their own disgrace by passing the resolution as it now stood? No; they would declare their country to be disgraced. He could not consent to this. He therefore moved, as he wished to make as little alteration in the resolution as possible, to strike out the words "disgraceful to the," and insert "in a."

Mr. RANDOLPH did not perceive the necessity of the amendment, neither was he very tenacious of the language of his resolution. The object of it alone was dear to him. Yet, there were occasions in which it behooved men, and nations too, to confess their sins. He thought the present one of them. Would the State of Georgia, for instance, have done herself more honor, if, instead of passing sentence of indelible disgrace on the Legislature which passed the famous law of the 5th of January 1795, commonly called the Yazoo act, and expunging it from her records, she had faintly censured its authors and their abettors by a dainty circumlocution? He feared he would not be pardoned for introducing the Yazoo act in this case, since he had seen a most respectable Representative from the State of Georgia, (Mr. TROUP,) attacked on all sides for daring to lisp the word Yazoo. They were told it was a worn out thing. That the House and the people were tired of it. That, like the cry of wolf in the fable, it had been repeated until no one would heed it. Mr. R. said that those who calculated in this way reckoned without their host. The people of the Union could never become familiarized and hardened to acts of corruption, by whomsoever they might be practised or patronised.—Whether the words were stricken out or not, was perfectly immaterial to him. Perhaps, in rendering the censure more delicate, it was only rendered more severe. He thought the situation of these gentlemen—for gentlemen they were, by the most honorable of all titles, the sword—disgraceful to the country. Whenever the country was disgraced, he was for confessing it, that the people might be roused to wipe it away. For this reason he had said that the Navy of the United States was a disgraced Navy, and he should continue to say so until its character was retrieved.

Mr. QUINCY said he was as willing as any gentleman to confess his own sins, but did not like to cast censure on other people, much less on his country. They would declare by passing the resolution as it now stood that their country was disgraced. He hoped they would not do it. He had no objection to the House confessing its own misdeeds. Let us, said he, work out our own reformation, but not pass a censure on our country. He declared his objection to the resolution to extend no further than to those words.

The amendment moved by Mr. QUINCY was then agreed to without a division; and the question recurring on the original resolution,

Mr. ELLIOT said that when a Republic had availed itself of the material services of any part of its subjects, it had been the opinion of the wise and good in every age, that it should amply remunerate them. He was prepared to have voted for this resolution in its original terms, but still, was not disposed to make any objection to the amendment which had taken place. The resolution appeared to him in the light of an inquiry, though it had been said that it might be considered as containing a principle. If there were any of those officers and soldiers who achieved our independence, existing in a state of indigence which reflected disgrace on the country that owed its liberties to their valor, the object of the resolution was to make some provision for their future support. He hoped the subject would at least be suffered to go to a committee. No harm could result from the adoption of the resolution. It would merely be saying that, if the unremunerated services of the officers and soldiers of any part of the community call upon their country for their adequate support, provision ought to be made for them. He should, therefore, vote for the resolution.

Mr. HOLLAND said he always had been of opinion that, if there were any description of citizens who were unremunerated for their services in the Revolutionary war, there should be no statute of limitations to bar their claims. This subject, however, was in the possession of a select committee. Although he admitted that no statute of limitations ought to pass, he was not prepared to vote for the adoption of this resolution as it now stood. It declared that every person who served in the Revolutionary war ought to be provided for. This was taking a very broad ground, indeed. If there were persons who had suffered in that war, and were now indigent from their own misconduct, he thought they ought not to be provided for, neither was he prepared to have said that his country was disgraced, from her conduct towards such persons. The services of these officers and men had, in many instances, been fully requited. It was true, that, in some instances, they had not been fully requited; and, if these could be singled out, the sufferers ought to be rewarded for their services. But, should they now adopt a new principle? The old principle was, that all persons who had incurred disability by known wounds, in the Revolutionary war, should be placed on the pension list; and the law passed for that purpose was still in operation. Some persons were, perhaps, unprovided for under that law, who ought to be remunerated. But, were they, on that account, to adopt this resolution on the broad ground on which it now stood? He thought not. It would be making these men a privileged order; and if it were adopted, to what consequence would it not necessarily lead? It would naturally be

inferred, from the passage of this resolution, that every man who hereafter enlisted in the armies of the United States, must be provided for in like manner. Would the House go to the extent to which this proposition would lead them? He, for one, was not prepared to do so, and should vote against the resolution as it now stood.

Mr. Nelson said he should say but few words on this question, as the subject was too plain to require illustration. The gentleman from North Carolina had not understood this question as well as he generally understood such subjects. The gentleman wished it only to extend to such claims for services as had not been barred by the statute of limitations. When an old soldier now came to this House, or to the public offices, to claim payment of a balance—while they admitted that the money was due to him, that his claim was just—they told him: "We cannot pay you this. Your claim is barred by the statute of limitations." It was a very easy matter to draw a natural and clear distinction between paying a man the very money they promised to pay him, and making him compensation for his services. What was the true state of the case? When these men served to the end of the war, they were to receive half-pay. When the war was concluded, a proposition was made to them, and accepted, to commute this half-pay for five years' full pay; and they all received this, whether wounded or not. But, when a man came before them, who, in addition to the services he had performed, had claims upon them from his disabled situation, what said the law? What were its provisions? So narrow that not one man in fifty, who was entitled to it, could receive a pension. This is not all, said he; go out of your own doors, and you may find men almost naked, to whom the country does not owe one cent, but who had spent the best part of their lives in its service, and are so injured by their exertions that they must now starve, except you provide for them. Mr. N. said if he understood the resolution, these were the people it went to provide for. Although a man had received no wound that would entitle him, after certain evidence, to be put on their pension list, yet, if it were proved that he had fallen into indigence in consequence of his services in the Revolutionary war, it behooved them to make provision for his support. It was truly observed last session, by a gentleman from New York, that there were but few of them left, and those few, in a few years would sink into their graves—and then, said Mr. N., the vast expense complained of will be entirely removed. Would the United States refuse to hold out their hands to relieve a poor fellow who had spent his life and wasted his constitution in achieving their present situation and standing among the nations of the world? Was there even a human being on earth who would not assist such a man? If they were suffered to depend on the charity of individuals for existence and support, it was disgraceful to the country. He hoped provision would be made for them, and that their old soldiers would no longer be suffered to beg through the streets for a few half-pence, to the disgrace of the country for which they had fought.

Mr. Smilie said that, as he understood the resolution, it comprehended the remains of the Revolutionary Army, now in a state of distress and indigence. It was certainly a plain principle—one which could not be denied—that, in all contests for the defence of the community, every member of that community ought to bear his proportional part, and that no one should contribute more than another, according to his circumstances; and yet, unfortunately, such was the state of society, that it was found strict justice could not be done to all. After our Revolutionary war, it was a melancholy fact, (and if they would look back to ancient times, they would find the same had happened to other nations,) that those who had least merit enjoyed most of the advantages of the war. They all knew, that during the Revolutionary war, there were thousands who sold their property far below its value, and were of course reduced to poverty. This was a circumstance so well known, that he need say no more on it. Unfortunately, when the Government made provision for paying their Army, the poor soldiers themselves were not benefited by the provision which the nation made. For instance, those States which paid the militia for services, paid them in land. The Government of the United States did the same. Yet, these men received little or no benefit from it. In the State of Pennsylvania, and he believed in other States, the soldiers disposed of their lands for a mere trifle, to those speculators who were looking about for bargains. Whatever the General Government might do from charity, they were not bound by law or justice to do more. The misfortune of indigence had fallen on these men, not so much from the acts of the Government, as from a set of speculators, who took advantage of their then necessitous situation. As far as any compacts had been entered into by Government, for payment or settlement of claims, he was willing to fulfil them. He would go further—he was willing to think of the resolution, and see what it was possible for them to do. At the same time that they felt for this class of persons, and wished to provide for every meritorious officer or soldier, if a law for the purpose were passed, it must be so guarded as to prevent others, not deserving, from being included. He wished to give these unfortunate people everything reasonable—he felt for them—but he must also have respect for other objects. He believed it would be right to adopt the resolution, and see what could be done; though, in voting for the resolution, he did not wish to commit himself to vote for the bill to be introduced in pursuance of it, except the provisions it contained should be such as met his ideas.

Mr. Eppes said he had never claimed any extraordinary degree of quickness of understanding. He professed however to possess, and did possess, firmness enough to discharge on all occasions his duty. In the discharge of that duty, he would offer an amendment to the resolution now before the Committee. He moved to strike out the whole resolution, from the word "for," and to insert "the

'payment of all claims not heretofore discharged 'for personal service, or for any matter or thing 'furnished during the Revolutionary war, and for 'placing on the pension list every officer or sol- 'dier disabled while in the service of the United 'States, whether such disability has been incurred 'in the actual line of his duty or not." Mr. E. thought that the United States ought to be just before they attempted to be generous—that many fair and *bona fide* claims for personal service existed which ought to be paid—that a provision of this kind would be beneficial to a very large portion of officers and soldiers who had never received their just claims for personal service. He was willing to take the broad principle of paying all just claims, and of providing for every officer and soldier disabled in the service of the United States. Under his present impressions, however, he could not vote a provision for persons who were not disabled in the service of the United States, and who have no claim on the public bounty, but being in a state of indigence. Public service rendered was the only just principle on which provision for an adequate support could be claimed. If any additional provision was now to be made for the officers and soldiers of the Revolutionary war, it ought to include all who had rendered personal service, whether in a state of indigence or not. The officer or soldier who has already been paid, has not as fair a claim on the public bounty, although in indigent circumstances, as the officer or soldier, however rich, who has never received what is justly due to him, and whose claim is now barred by the statute of limitation. Mr. E. said that the pension law—the only provision existing for persons disabled during the Revolutionary war—required amendment. A claim for a pension had been put into his hands by one of his constituents. The testimony exhibited was such as to leave no possible doubt that the claimant was disabled while in the service of his country—that he is now poor, and unable to make any exertions for his support. His application has not been granted, because he has been unable to produce satisfactory proof that his wound was received while in the actual line of his duty. He thought every officer and soldier who had been disabled in the service of his country ought to be provided for. He thought every person who had a claim which had not heretofore been discharged, ought to be paid. The amendment he had offered would include all officers and soldiers who had claims, or who had been disabled in the service of the United States. A provision to this extent would remove every just ground for complaining against the liberality or justice of the United States. He hoped the amendment would be adopted.

Mr. RANDOLPH said, that under color of amendment, this appeared to him to be a complete substitute for the resolution he had the honor to propose—it went to provide for a different object. The House must perceive, if the amendment were adopted, that a man who had served in the Revolutionary war, and now existed in a state of indigence, disgraceful to the country which owed its liberties to his valor, was left unprovided for. And this was the description of persons, whether wounded or not, whom it was the object of his resolution to remunerate. He wished for the decision of the Chair, whether the amendment were in order.

The CHAIRMAN decided that the amendment was a substitute, and could not be received.

Mr. SMILIE said it was now a late hour, and he wished the Committee to rise, and obtain leave to sit again.

Mr. RANDOLPH did not wish to prevent the Committee from rising, but he very much feared this resolution was to be lost. Gentlemen had said that they would vote for it so far as to authorize a bill, but they plainly intimated what the fate of such a bill would be. One gentleman had said, that unless the details of the bill were exactly to his mind, he should vote against it. When a sacrifice was resolved upon, it was easy to find fuel to consume the victim. It had, indeed, been said that they were not bound by justice to make this provision. If the gentleman had said they were not bound by law, he would have been correct. But, Mr. R. said, they were bound by justice. It was not an act of liberality or benevolence which he had proposed to them, but of sheer justice. Another thing which made him fear, very contrary to his first expectations, that this measure was to be defeated, was the attempt to mingle it with other matter which did not speak so forcibly to the hearts and understandings of the Committee. There was a wide difference between supplies furnished and personal services rendered. Were you to meet a beggar, who should tell you that he was a cripple from the rheumatism—that he had furnished supplies during the war, and sold his certificates at a great loss—would you feel the same sensation as if you knew that he had been wounded at Eutaw or Camden? If gentlemen wished to repeal or modify the statute of limitation, let them do it in a separate bill; but let not, said he, my resolution, exclusively of its own weight, be saddled with the dead weight of the act of limitation, or with whatever else gentlemen may choose to load it, merely with the view of breaking its back!

Mr. SMILIE would explain what he meant. He should vote for the resolution, because he wished to see what could be done under it. He did not know what difficulties might arise in the execution of the purpose of the resolution, at the same time that he had no objection to its going to a committee, but it was impossible for him to say how he should vote on the bill till he saw what form the committee should have given it. But he would promise the gentleman from Virginia that he should not vote equivocally on the subject. He was sincerely disposed, if it could be done with safety to the community, to make this provision.

A motion was then made for the Committee to rise, and carried—75 voting in favor of it.

THURSDAY, December 3.

The SPEAKER laid before the House a letter from the Secretary of War, enclosing a statement

of the respective number of officers, non-commissioned officers, and soldiers, composing the Army of the United States; noting the number wanting to complete the present establishment; transmitted in obedience to a resolution of this House; which were read, and ordered to lie on the table.

Mr. GEORGE W. CAMPBELL, from the Committee of Ways and Means, to whom was referred, on the twenty-sixth ultimo, the petition of David Porter, Master Commandant in the Navy of the United States, reported a bill remitting the duties payable on the importation of a monument to be erected in memory of the officers of the United States' Navy, who fell during the attack made on the city of Tripoli, in the year one thousand eight hundred and four, which was read twice, and committed to a Committee of the Whole on Monday next.

On motion of Mr. CHITTENDEN,

Resolved, That a committee be appointed to inquire whether any, and, if any, what, alterations ought to be made in the several acts regulating the holding of Circuit Courts in the United States; and that they have leave to report by bill or otherwise.

Ordered, That Mr. CHITTENDEN, Mr. BIBB, Mr. STANFORD, Mr. GOODWYN, Mr. T. MOORE, Mr. ROWAN, and Mr. GARDNER, be appointed a committee, pursuant to the said resolution.

The bill sent from the Senate, entitled "An act for the preservation of peace, and maintenance of the authority of the United States, in the ports, harbors, and waters, under their jurisdiction," was read twice and committed to a Committee of the Whole on Monday next.

Mr. JONES, from the committee appointed on the twenty-first ultimo, presented a bill to place in the hands of the President a sum of money for the purposes therein mentioned; which was twice read and committed to a Committee of the Whole on Monday next.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to appropriate money for the construction of an additional number of gunboats;" to which they desire the concurrence of this House.

ARMING THE MILITIA.

Mr. BLOUNT said, that for the purpose of entering on the subject of defence, he would move, that the unfinished business of yesterday (Mr. RANDOLPH's resolutions) be postponed till Monday next.

Mr. RANDOLPH said, except the gentleman from North Carolina could demonstrate, that the fortifying our ports and harbors, and building gunboats, were measures of greater importance, and more deserving the attention of the House, than the arming of our militia, he could not consent to the postponement.

Mr. BLOUNT said he should not take up the time of the House in an inquiry whether it was of more or less importance. He considered it his duty to make the motion; and the decision of the House on the question would be satisfactory to him, be it what it might.

The motion was negatived—yeas 44, nays 60.

Mr. RANDOLPH then moved for the order of the day on the unfinished business of yesterday, being the consideration of the resolutions submitted by him.

Mr. M. WILLIAMS moved to discharge the Committee of the Whole from the further consideration of these resolutions, on the ground of the subject being already in possession of committees of the House; the first being in his opinion in the hands of the committee on claims barred, &c., the second, of the committee appointed to revise the militia laws, and the third, of the committee on that part of the President's Message relating to Military and Naval Establishments.

After some conversation on the subject, between Messrs. WILLIAMS, EPPES, and RANDOLPH, the question was taken separately on discharging the Committee of the Whole from the further consideration of each resolution, and each negatived. On the first, yeas 34; on the second, nays 22; on the third, no division.

The House then went into Committee of the Whole, when the question was taken on the first resolution, without further discussion, and carried —yeas 63, nays 51.

The second resolution being under consideration in the following words:

Resolved, That provision ought to be made, by law, for arming and equipping the whole body of the militia of the United States.

Mr. EPPES said he was in favor of arming the militia of the United States, but not to the extent contemplated by the resolution. He did not know that the interest of the United States required arming, at the present moment, "the whole body of the militia," which he considered to be the object of the resolution. He thought it would require an appropriation too large for this single object, however important it might be, and it certainly was one of the first importance. He was willing to arm at once that portion of the militia which the United States might have occasion to employ. He believed that an expense to this amount could be met without diverting from other important objects too large a portion of the resources of the nation. The whole body of the militia of the United States amounted to 640,000. To arm these would require, at a moderate estimate, $6,400,000. This would be a very large sum to appropriate to a single object. In order to try the sense of the Committee as to the principle of the resolution, he would move to strike out the words "whole body of the militia," and to insert 100,000 militia held in requisition under the act of Congress in 1806, and the 30,000 volunteers authorized by the act of Congress passed in 1807. The resolution would then provide for arming 130,000 militia, a number sufficient to meet even the exigencies of war.

Mr. RANDOLPH said he should consider an agreement to the amendment now offered as equivalent to a direct rejection of the resolution, because in order to arm these troops, the far greater part of whom had been already armed by the respective States, it would not be necessary to expend

one dollar in the purchase or manufacture of a single additional musket. He had framed his resolution in the broadest possible shape, in order to bring the question to a fair trial. He had no idea of drawing six millions of dollars out of the Treasury; that calculation assumed the fact that the States and the General Government were utterly destitute of arms; which not being true, all the deductions from it fell to the ground of course. The extent to which the House would go would be limited by the appropriation in the bill. His opinion was that an appropriation, and a very liberal one, too, should be made for this object; but at the same time that the House should pledge itself to the public to put arms into the hands of every man capable of bearing them, and liable to be called into service.

He had avoided, in the resolution, everything relating to the organization of the militia, because he was little acquainted with the subject, and because he was convinced that all attempts to train and discipline them, would prove futile, unless they had arms in their hands. No discipline could make soldiers of men who mustered with canes and cornstalks. He recollected on a former occasion with what force his excellent friend, (Mr. MACON) whom he had then in his eye, had demonstrated that an armed people must necessarily be a free people. All the parchment in their archives was of less force than a single musket in maintaining the liberties of the citizen. But, Mr. R. said, although he had abstained from touching on the organization of the militia, he was deeply impressed with the necessity for some alteration. He feared that under the present system the militia could never be brought to act. They had taken the model of their laws for the government of the militia, when in actual service, from the barbarous despotisms of Europe. They had addressed themselves solely to the basest passion of the human heart, which it should be the chief purpose of every military institution to eradicate or suppress. The lash, the picket, the cat, every vile instrument of torture, were held up to the freemen of America as the sole motives of action; as the only inducements to a faithful and zealous discharge of their duties to themselves, their families, and their country. Was there not reason to believe, that such a system, when brought into actual operation, would produce disaffection, if not revolt, in those who were subjected to it? Was there no difference between freemen, possessed of information and property, and wretches picked up in the streets, educated in ale-houses, such as composed their standing army? Would men, who felt as high a sense of their independence as any member of that House, submit tamely to the lash of the executioner at every nod of military caprice? He hoped to see them governed on worthier principles; that an address would be made to their better and nobler passions. This was not an opinion which had originated with Mr. R. It had been suggested to him by a gentleman from South Carolina, (General Sumter,) formerly of that House, but now a member of the other, a man than whom no one in the nation was better qualified to pronounce upon this delicate and interesting subject. His experience upon it perhaps was unequalled by that of any other person now living; his zeal and exertions in this branch of the service most certainly had never been surpassed.

Mr. EPPES said, that the gentleman from Virginia had not only misunderstood the operation of the amendment he had offered, but had totally mistaken his views in presenting it. He had no wish to defeat the resolution offered by the gentleman from Virginia, but to adapt its provisions to the resources and exigencies of the nation. He was not in the habit of meeting indirectly any measure to which he was opposed. He had stated before the resolution was taken up in the Committee, that he was in favor of arming the militia to the extent which he now proposed. It had been stated by the gentleman from Virginia, that if the amendment offered was adopted it would amount to a rejection of the resolution. That while the amendment held out the idea of arming 130,000 militia it would not put a single musket into their hands. That the laws holding the militia in requisition required the States to arm their respective portions of militia, and that arms for this purpose would not be necessary. It was true that the law required the States to arm their respective quotas of 100,000 militia. He believed, however, that few, if any, of the States had arms to spare for this object; and from the returns he had seen, Maryland had none. A compliance with this part of the law would leave most of the States totally destitute of the means of arming the portion of militia left within their respective limits. On the contrary, if provision is made by the National Government for arming this portion of the militia, the arms belonging to the respective States, which under the existing law must be applied to this object, would remain in the hands of that portion of our citizens not called into actual service. He considered the amendment therefore as a substantive provision for arming 130,000 militia, inasmuch as it would leave within the respective States the arms now held in requisition by the General Government for that purpose. Mr. E. said that it had also been stated by the gentleman from Virginia, that the objection made to his resolution was founded on the principle of there being no arms in the country. The resolution takes the broad principle of arming the whole body of the militia of the United States. He considered that to be the object of it. If, however, the gentleman means to provide only for the purchase of such additional arms as are necessary, with the arms possessed by the United States and the States, to accomplish this object, it would reduce the expense from six millions four hundred thousand dollars to three millions. From the returns made of the arms of the States, it appears that they possess something over 200,000 muskets; he did not recollect the odd numbers. That in the arsenals of the United States there were 130,000 muskets, making the whole number possessed by the States and the United States, 330,000. Taking 640,000 for the number of the militia it would be neces-

sary to provide 310,000 muskets, which would cost more than $3,000,000. He did not believe that it was the interest of the United States at the present moment to appropriate so large a sum to this object. He thought that a view of all the measures necessary for defence ought to be taken, the sum adequate to each appropriated, and no more. The whole body of the militia could not be called into service, nor did he wish therefore at the present moment to provide for arming the whole. He thought that at the present interesting crisis of our affairs every species of expense ought to be avoided which was not necessary for the defence of the nation. That our resources ought to be managed with a rigid economy, which could alone insure our meeting without difficulty the various important demands which in the event of war must be made on the funds of the nation.

Mr. LLOYD said he would correct the gentleman last up in his supposition that the State of Maryland had no arms. He could assure that gentleman and the House that the State of Maryland had sufficient arms now in her possession to arm the greater part of the militia of the State, and that she would never be found wanting. Mr. L. had always supposed and had been taught to believe that the best and most effectual defence on which a country could rely for its protection, was its militia. To render these militia efficient they must be supplied with arms. Many States in the Union had neither arms nor sufficient money in the Treasury to purchase arms for their militia. Even admitting it would cost the United States three or four millions of dollars to put arms in the hands of the whole body of the militia of the United States, they could do it without injury. Could any man believe that the militia of any State could be properly qualified for service, by mustering with cornstalks? For his own State, although it possessed its full proportion of arms in the United States, yet the militia were but partially armed; and when drawn out to muster might be seen exercising with cornstalks or walking canes. He would ask gentlemen if they wished the militia of the United States to become adequate to the purposes of defence? If they did, they must first place the people in a situation to make them so. The gentleman from Virginia had informed them that the United States had at present about 340,000 stand of arms, and that the number of the militia amounted to about 640,000. It might be presumed that some of the States also had arms—[Mr. EPPES explained, that there were in possession of the States rather over 200,000, and in the arsenals of the United States about 140,000 stand of arms.] Then Mr. L. said, admitting that there were in the arsenals of the United States, 140,000 stand of arms, and from the returns made to the Executive that there were in the possession of the States 200,000, this number would certainly very much lessen the number to be purchased; and in all probability, as the gentleman had stated, and he had no doubt it was the case, there was an error in the return from the State of Maryland, there might be errors from other States, and it was impossible to say how many might be in possession of the States. The number however, being reduced to 440,000 wanting, it would require $4,400,000 to procure arms for supplying all the militia in the Union. An objection had been made to appropriating so much now to that purpose. Could there be an impropriety in setting out with the principle that the militia ought to be armed, and that they would arm them? What objection could be made to a resolution declaring this principle? Let us said Mr. L. tell, the people of the United States, "we think you deserve protection;" let us begin to place arms in their hands, and though we cannot well make the whole appropriation necessary to accomplish the object at this time, let us begin by making a partial appropriation. He concluded by saying that he thought the original resolution and the principle it established correct; he should therefore vote for the resolution and against the amendment.

Mr. CHANDLER wished the amendment to be amended, by adding to the end of it "when called into actual service." He thought it improbable that the whole number of 130,000 would ever be called into service at one time; and there were ways enough of spending the money of the United States without appropriating more than was necessary to this purpose. If the gentleman who proposed the amendment under consideration would amend his motion in this manner, or assent to its being amended, and these amendments should both be agreed to, he should be pleased with the resolution; as it now stood, he was opposed to it. It was a correct position that the whole body of the militia of the United States should be armed; it was also true, that the United States had made provision for this purpose. It had enjoined it as a duty on each State to see that its own militia were properly armed. Mr. C. presumed that none of the States had carried this injunction completely into effect; but they had gone so far with it, that if gentleman looked at the returns for the year 1806, they would find that 214,227 muskets were at that time in the hands of the militia, besides rifles and shot guns, making altogether 364,000 stands; probably at this time there was a much larger number. These would be used immediately to repel invasion or attack, till the regular army of the United States could be brought into service. There were, he said, in the arsenals of the United States at this time about 135,000 muskets and 5,000 rifles; these would be sufficient to arm any number of militia that might be called into service at any one time, and at the same time to supply the men composing the regular army. If the amendment which he had suggested were made, he should vote for the resolution; otherwise he should certainly vote against it.

Mr. EPPES said he would agree to the amendment proposed by the gentleman last up, but that it went to destroy the principle of the resolution, to which he did not object; but he thought the number limited by his amendment were as many as could be armed at the present time.

Mr. NELSON said it appeared to him very extraordinary that any member of the House could make objection to this resolution. What did it

contemplate? Not the purchasing at this time as many arms as would arm the whole body of the militia of the United States, but it declared that every man in the United States should have arms put into his hands as soon as it could be accomplished. If the resolution were permitted to go to a committee, a bill would be introduced predicated on the resolution; when they went into a discussion of that bill they would find that it would provide for annually appropriating a certain sum for purchasing arms and placing them in the hands of the militia. If gentlemen understood this in the same manner as he did, what reason could they produce why the amendment offered by the gentleman from Virginia should be adopted? The resolution contemplated making a provision by law which would enable them within a certain time to put arms into the hands of the whole body of militia in the Union. Whatever might be their opinion that every freeman who was bound to do duty ought to have arms in his hands, Mr. N. did not believe that the militia alone would be found a sufficient force on which to rely in a severe and active warfare; but that they must have some regular troops. Every man would, he supposed, allow that a war would have a termination at some time; what might be the consequences, if the militia were not armed? These regulars might not perhaps be the best men in the world; for the best would not enter among the regulars; they might be under the command of some influential and ambitious man, who would turn their arms against their country. He wished the people, therefore, to be prepared at all times to repel encroachments on their rights and liberties, whether internal or external. The gentleman from Virginia (Mr. EPPES) had told them that there had been no return made from the State of Maryland. He believed the gentleman had stated this correctly, as he was always correct; but he could tell the gentleman that that State had about ten thousand stand of as good arms as any on earth. He should vote for the resolution.

Mr. EPPES said he could perhaps gain the end he had in view by withdrawing his amendment, and by leaving the resolution on such a broad basis as would give the House full liberty to decide the question on the ground of principle. He was willing to modify the resolution in this manner, and, therefore, withdrew the amendment which he had offered, and moved to strike out of the resolution the words "the whole body of," so as to leave as broad a principle but more general provision.

Mr. RANDOLPH said, that if indeed there was any substantial difference between the resolution in its original shape and as it would stand amended by this motion, he could not see it. Who were the militia of the United States? Suppose a motion made to provide for the payment of the public debt. What was the public debt? All the money which the public owed. Who are the militia? All the men subjected to do militia duty. If, however, there was a difference he was opposed to it: if there was none the motion was nugatory. The House were told that they ought to exercise a rigid economy in the present posture of affairs, but he trusted it would not be an economy of arms; economy of words, of times, of laws and proclamations, and of money, too, upon useless and fantastic projects, was highly desirable—economy of anything, if you will, but of arms in the hands of the people. It was obvious, from the nature of the resolution, that the number of new arms to be procured would be limited by the appropriation. Mr. R. likened it to the proposition to pay off the whole of the public debt, by vesting a certain sum in the Commissioners of the Sinking Fund. There was the pledge and the means provided of redeeming it. This was what he wanted in the case of the militia. The proposition was at all times true, but there was now an imperious necessity for carrying it into effect, with all possible despatch. They lived in an age of revolutions and changes. Among other things which were not impossible, might not Spain, with whom we had long been on a slippery footing, take advantage of the moment when they were engaged on the seaboard in an amphibious, half maritime war, to repossess herself of a valuable frontier province, on which she yet casts her gloating eyes? She never had been, and never would be, reconciled to its loss. The want of ability, not of inclination, had withheld her, hitherto, from seizing upon it. Did not this, to say nothing of attempts on their own liberties, which must at last be repelled, whether from foreign or domestic invaders, at the point of the bayonet, did not this show the necessity of an armed militia?

But it was said there were ways enough of getting money out of the Treasury without going to the expense of arming the militia. It was true, and it was because he saw every engine set in motion to draw money out of the Treasury, that he was peculiarly anxious that some part of it should be applied to purposes of real, undisputed utility. Suppose it should turn out that their gunboats dare not face the enemy's fleet. There was so much money sunk. Do not then, said he, suffer all our resources to be applied to this precarious defence; but if the Treasury is to be drained, suffer a part at least to flow into channels which may hereafter adorn and fructify the land.

Mr. THOMAS said, that he presumed every gentleman in the House would wish to see the whole militia of the country armed; but in all subjects of this nature it was invariably the case, that the House referred them to a committee, for the purpose of ascertaining all information relative to the subject, and to obtain a report of facts. The House had received various information from different parts of the House, of the number of arms in different States, and of the number in the arsenals of the United States. It was true that there was a great deficiency of muskets in the militia of the United States, but it was also true that a great portion of them had now in their hands useful, serviceable, and efficient firelocks, and other implements of war. There were indeed a great number of persons, who would be as

efficient in the field as any others, unable to provide themselves with arms; to this class the aid of Government ought to be extended; but he did believe that all persons who were able should provide their own arms. In order that the subject might come before the House in such a shape that they could act upon it understandingly, and that they might be provided for war when it came, when the present amendment was disposed of, he should propose another amendment, referring the resolution to the committee appointed to inquire into the militia laws, who had the subject already before them. He thought this would be the proper course for the subject to take.

Mr. CHANDLER moved to amend the amendment by adding at the end of the resolution the words, "when called into actual service."

Mr. SMILIE said, that it was the wish of every member of the House that the whole of the militia should be armed, there could be no doubt; the only question was, whether under present circumstances it was proper to go to any great extent, when they knew they would have occasion for all the money they could command. It was undoubtedly a melancholy consideration, that a people enjoying the first privileges of freemen, had not yet availed themselves of one of their most important rights, that of arming themselves. If the nation was not on the eve of a war, as he believed it was, they ought to consider the state of the country, and when they thought of disposing of the public money, to take care that it should be done to the best advantage. The only question to be considered before they gave their votes on this resolution was, whether there were not already sufficient arms in possession of the United States, to arm any force which might be called into service. Was this a time to expend money for arms if they had sufficient for immediate exigence? Men were as necessary to carry on a war as arms, and more so, because arms could not be employed except they had men to use them. Now he did believe that there were arms sufficient in the United States to arm any force that might be necessarily called out for the service of the United States; if this was the case, they ought to employ their money on some other objects than those for which they had already provided. There could be no objection to passing the resolution as declaring a principle, that the people should be armed; when the bill was brought in, many difficulties would arise. It would then become a question, "shall the people be armed at the expense of the General Government?" He regretted exceedingly, that ever a freeman of the United States should consent to hold arms at the expense of the Government. As freemen, they should arm themselves; and he hoped, whenever they did arm the people, when they were obliged to put arms into their hands, those arms should become the property of the individuals to whom they were furnished. Another difficulty would arise: there were many States who already possessed arms; if a part had supplied themselves with arms at their own expense, would you, (said Mr. S.,) arm others at the expense of the public? Would you show one more favor than another? He foresaw great difficulties on this subject. He would observe that arming the militia ought to be done in a time of peace and not in a time of war, which appeared to be approaching, for in such an event they would have occasion for all their money; and he believed at the present time they could not make a large appropriation, if they meant to provide for the necessary expenses of war.

Mr. MACON said he would express his ideas on this subject in a few words. This was one of the most important questions that ever came before the House; it was one on which he had not reflected before he came to the House this morning, as he had not known of it before. He had been in hopes that those gentlemen who lived in more remote parts of the United States than he did, would have given their sentiments on this subject. As to the probability of war, he might stand alone in the opinion which he entertained; but he had considered that the nation was actually at war from the moment of the affair of the Chesapeake, if they felt a disposition to maintain the rights of their Navy. If they were at war, or were to have a war, they could not foresee how the enemy would prosecute it: they would never attempt an invasion, for they had enough of that in the Revolutionary war; they might land, but if the people in the the seaports from one end of the country to the other were protected, the country was in no danger. If the people thought they were properly armed, he did not think it proper to put arms into their hands: but they must prepare for the war that was coming. Let the resolution go to a committee; they were not now debating on the principle but on the details, which should be postponed till the bill was brought in. Objection was at first made to the resolution from the magnitude of the object which it embraced; but all the objections which had been offered were to the details, and the amendments which had been offered could more properly be proposed to the bill.

He did not expect that Britain would trouble them at the present time; but in the Spring she would commence her operations. The late attack on the Chesapeake was as much war as the attack on Copenhagen. And what, said he, are we now doing? Are we not disputing about detail? The amendments which had been offered could be made to the bill; he did not expect that a committee could be appointed on this subject, which could report a bill that would not need amendment. Let us see the bill, said he, and if it cannot be reduced to practice, let us throw it away. The only question now appeared to be whether they would immediately arm the whole body of militia, or whether they would commence a system of arming them? He had not looked at the returns which had been made, but from what had been said, and from his own knowledge, he believed it would be found that none of the States were completely armed. What did this prove? That in this time of danger they must do something; they must step forward to assist

them. If there were money in the Treasury, it should be applied towards the defence of the nation; could they do this better than by putting it in the power of the people to drive the enemy from any part it? The enemy would not land in our bays or inlets, but on our shores; and the people on these shores must be enabled to drive them away. Should the House be now contending about the detail of a resolution? He hoped not. He thought the public money should be applied to the best purposes; no doubt there would be a diversity of opinion as to what were the best. They might immediately purchase ten or twenty thousand stand or any other number, and put them into the hands of the States most exposed to attack from sea; which was particularly necessary at present, as the people on the seacoast were most in danger. But if gentlemen who lived on the seacoast, North and South, East and West, said that they were properly armed, he should be content to wait, because he should suppose their information better than his; if they were not, he wished the resolution to be adopted.

Mr. NEWTON said, he believed with the gentleman from North Carolina, that ever since the attack on the Chesapeake the nation had been in a state of war; and it behooved them, considering the country to be in that situation, to prepare for any event. He had not given the committee any trouble on this subject, because he had thought that when the bill was before the House, it would be the proper time to make remarks on it. Another reason for his silence was, that he wished to give celerity to the passage of the resolution through the Committee, that the bill for the defence of our ports and harbors might be taken up. As to the situation of the people on the seacoast, every gentleman in the House must know that it was perilous; that they were exposed, and that the first blow must fall upon them. On the seashore they wanted something more than small arms; they were not sufficient for their defence. They must have cannon, fortifications, gunboats, everything which the wisdom of the nation could devise, to protect them from the assault of an insidious foe, who never gave notice when he was about to strike a blow. Mr. N. would not detain the Committee longer, but merely observe, that he hoped they would dispose of this subject, and give the House an opportunity to take up the bill reported by the Committee of Aggressions, because it was time that something should be done for their shores. While gentlemen in the interior were perfectly safe, the towns on the seaboard might be battered or burnt to the ground.

Mr. ALSTON said, if making a noise was being at war, they certainly were at war; and the speeches they had heard were as much like war as anything he had seen. He would state a case to the House. Suppose what they had seen published in the newspapers as to the disposition of England should be absolutely denied. Did the attack on the Chesapeake then constitute war or not? Suppose the British cabinet should deny that they gave orders to this effect? Would not there be as fair an opening for adjustment of our differences with Great Britain as at any time heretofore? It had been said that they were at war. He hoped, contrary to the opinion of many gentlemen who had expressed their opinions on this and former occasions, that they should not have a war; but while he expressed the belief that they were not at war, he would go as far as any gentleman to prepare for it. He was willing to arm the militia of the United States whenever their services should be required, and not till then. Set about the work of arming the whole body of the militia as soon as they pleased, in the manner spoken of by his friend from Maryland, and he believed that, at the end of ten years, there would be very few more arms in the hands of the militia than at the time they began. Who would receive arms which they were required to return at stated periods; a great portion of the people of this country would not hold them on such terms, but would prefer a gun which they could purchase and call their own.

But if it were in the power of the United States, and there was a greater surplus of revenue in the public treasury than they now possessed, he should not be willing to furnish the whole body of the militia with arms at one time, and at the public expense; for there were better purposes to which money could be applied than placing arms in the hands of those who might never be called upon to use them. Whenever the services of the militia were called for, arms should be placed in the hands of those called into service, who did not already possess them; and if the United States furnished those who were called out with arms, they would do their duty. He was willing that this resolution should go to a committee, who might furnish the House with any scheme for arming the militia, however impracticable, which their fertile imaginations might suggest. He was in favor of authorizing an additional force, and arming it at the expense of the nation; and this he believed quite sufficient for Congress to do at this time.

Mr. RHEA, of Tennessee, said, he should vote for the resolution in any shape, because he believed it a correct principle that all the militia should be armed under a Republican Government. One of the objects of such a Government was, that the people should have arms in their hands; and those who legislate for them should take every possible means to effect that object. For the want of arms being in the hands of the people of the nations of Europe, their liberty was lost. Had they possessed these implements in their own hands, they would never have been overturned; because having arms in their hands, they would have found spirit and strength to use them. The Legislature of every country should adopt every provision consistent with their resources to provide for arming their militia. A great deal had been said of the advantages of gunboats and fortifications; but both were useless, except they were seconded at the same time by men embodied with arms in their hands; without these, fortifications or gunboats were a mere nothing. The great bulwark of a nation was this

armed force, and the more armed militia it possessed, the stronger was the nation. He hoped this resolution would be agreed to. In all the Western States arms were wanting, and they knew not how soon those States would be a frontier to war. When a bill for this purpose was brought in, it would be in the power of the House to say how far they would go at the present time in making appropriations for it; although the whole purpose might not be effected for several years, let it progress, and it will at last be completed. Under this view, he contemplated it as a proper measure to be taken by Government, to fix on suitable places to establish machinery for manufacturing and repairing arms.

Mr. Fisk said, that the question now before the Committee was, whether or not they would adopt the amendment proposed by the gentleman from Massachusetts to the amendment offered by the gentleman from Virginia. If both these amendments were adopted, he should vote for the resolution; without them, he should vote against it. He conceived it necessary, that when the militia were called into actual service, they should be furnished with arms at the public expense, supposing a war should take place, and he thought it very probably would. He agreed that an armed nation would of necessity be free, but he also thought the arms they held should be their own. It had been well said by a gentleman in the course of debate, that the citizens of this country should not be placed in such a situation that their arms could be taken from them at any time. In European countries, which had been said to have lost their liberties because they had not arms, there had existed no want of arms, but those arms were at the will and disposal of a despot. Were Congress to adopt this measure in the manner proposed, they would soon hear exclamations against it from every part of the country. They would be obliged to appoint public depots under the care of public officers; and an influential and despotic character might have it in his power to corrupt these officers and get possession of the whole arms of the United States, in which case the country would be completely unprotected.

In the same proportion as the General Government furnished arms to the people, in the same proportion would their patriotic zeal to furnish themselves with arms be lessened. They could not therefore pursue the proposed plan without jeopardizing the liberties of the people. For these reasons he should vote against the bill on principle, and because he did not wish the time of the House to be occupied with any bill to be brought in by a committee appointed to deliberate on the subject.

A gentleman had said that they must alter their laws and regulations for the government of the troops of the United States, and of the militia when in service. Mr. F. heartily concurred with him in this, for he considered the military discipline under the present system such as no freeman could submit to. With regard to the necessity of having the militia armed, every man agreed; they must also have fortifications and gunboats. He believed the gentleman from Tennessee had observed that fortifications and gunboats were useless without an armed force. Mr. F. said he was in favor of an armed force, but without gunboats and fortifications an armed militia would make but a sorry defence against a fleet. He was for supplying that species of defence which the nation most wanted, and which was at this time most necessary. The nation had already three or four hundred thousand stand of arms, which were sufficient for internal protection, while their waters and shores were destitute of defence. It behooved them therefore to turn their attention to other modes of defence. Instead of wasting their time on a visionary object, as he conceived this to be, they should make preparation for the protection of their seacoast.

Mr. F. said, it would be found upon examination of the returns, that the three Northern States, with less population, had a much larger number of arms than the two middle States. If this proposition were to take effect, those States which had provided arms at their own expense, would receive only the few necessary to complete the number requisite for their whole militia, while those States which had not provided any, would receive the whole number necessary for their militia at the expense of the United States. Would this be consistent? Certainly not; it would be both unequal and unjust. On the other hand, if it were contended that the United States should purchase those arms which were now in the hands of the States, the Treasury would not be equal to it, if at the same time they made other necessary provisions. If the principle were adopted, one of these two systems must be pursued. He was also opposed to this motion at this time, because he wished to proceed to other modes of defence. He did not think, with the gentleman from Virginia, that they should direct the channel of their present expenditures in this course; for it was an object which could not be accomplished in a day or in a week. He was therefore in favor of the amendments, and opposed to the resolution.

Mr. Love said, there seemed to be but one opinion in the Committee, on the general question presented by the resolution; the propriety of providing for arming the militia of the United States was doubted by no one; but there appeared to be much difference in opinion as to the manner, in which this general measure should be carried into effect. If the resolution should be adopted in its present form, he feared that the committee who should be appointed to bring in a bill in pursuance of it, might consider themselves as restricted to the express and special instruction of providing for arming the whole body of the militia of the United States. He would rather not thus limit and direct the powers of the committee, but would be for giving the utmost extent and generality to their inquiries; he should therefore support the amendment for striking out these words: in doing so, he was influenced by a consideration of the present important crisis of our affairs. Great evils he conceived might arise at this moment from a declaration made by Congress that we would un-

dertake to provide for arming the whole body of the militia of the Union. [Mr. RANDOLPH said, that several gentlemen in the committee appeared mistaken as to the object of this resolution. He wished Congress to make annual appropriations each year till the whole body of the militia were armed.] Mr. L. replied, he understood the argument of the gentleman before, as he had now further explained it; he understood him to argue, that although we should declare our intention to arm the whole body of the militia, and thus assume on ourselves the whole subject, yet that it was not contemplated to arm them immediately, and all at once; but to make appropriations from time to time for that purpose. The principle, and the effect flowing from it was the same; if Congress should announce to the States in any way, that they had assumed exclusively on themselves the conduct of this great and important particular, at this crisis of danger, it might be productive of the most injurious consequences. It would produce a relaxation in the exertions of the individual States, and a false reliance on the powers and ability of Congress; while, therefore, (said Mr. L.) we are attempting, as it is said, to make an impression on foreign nations, of the extent of our preparations, let us not lose sight of the more certain effect this measure in its present style may have on our domestic economy.

But, he would ask, what impression on foreign nations could it rationally be hoped, such a measure as this would make, if carried into effect in the manner the gentleman from Virginia (Mr. RANDOLPH) had proposed? Would it not be equally known by such nations, what were the means, and what the mode to be applied to enforce our system? And when they should hear that ten thousand or twenty thousand dollars this year, and one hundred thousand or two hundred thousand dollars next year, are to be given towards this great object, could they hope that these nations would longer be impressed with serious fears, from our braggadocio plans?—while the House, by adopting them, might fail to meet the threatening crisis, and their real substantial preparations for defence be entirely lost. It was known that the State Legislatures were now in session, from one end of the Union to the other; it would therefore be extremely impolitic, at this time, to do anything which might have a tendency to produce a relaxation in the States, in improving their means of defence. Under an act of the last session of Congress, the President had already called on the Executives of the States, to arm and equip their different quotas, of an hundred thousand men. The States were probably prepared to do so, but should they at this time assume the whole extent of power on the subject, those arms might be withheld or the preparation to obtain them slackened, under the idea that Congress was about to make every necessary provision.

Mr. L. said, he was also in favor of the amendment proposed to the resolution by the gentleman from Massachusetts, (Mr. CHANDLER.) So far he thought the committee who should be appointed to bring in a bill, might be properly restricted. The experience of Virginia had taught him the difficulty and loss attending a distribution of arms among the individual militia; he knew not what other States had done, either in procuring or distributing them, but the arms which had been there manufactured and distributed had been scattered, and most of them lost. He had understood that, by the returns of arms made by the officers of the different divisions, it appeared that but few of those distributed remained in the hands of the men. Indeed, it had been asserted that, from the neglect and inattention of those in whose hands they had been placed, many of them had found their way entirely out of the country, and the arms of the Virginia manufactory had, from their superior excellence, been recognised in foreign dominions.

This might be the case with the distribution made by the United States of their arms; in time of peace the same inattention and carelessness of those instruments of war would take place among the militia men. It might, indeed, be true, that the melancholy hour was at hand when the United States were to be involved in war, but it might, too, be yet distant; he hoped they might still avoid war, and have peace on honorable, and only on honorable terms; if peace did prevail, the arms they should have distributed would be lost.

Mr. L. concluded by observing, that the general subject of the resolution was certainly of the first importance, and ought to be acted on; but he hoped it would be in such a manner as would not, at this dangerous crisis, be calculated to produce relaxation every where toward necessary and substantial preparations.

Mr. MACON said his colleague from North Carolina had given it as his opinion that they were not at war. If Great Britain denied that she gave orders for the conduct which had been pursued, Mr. M. said, they were not at war. Until she did that, he would ask his colleague in what state they were? Another gentleman had said, he hoped they might yet avoid war; the same question would apply to him; if they were not now at war, in what state were they? Mr. M. said, he had not heard that there had been a declaration of war made, neither had he seen the attack on the Chesapeake, but he believed the fact. No man in the United States was more desirous of peace than he was; he had never voted for or supported any measure which would lead to war; he had endeavored to preserve peace to the nation, but it had not been in the nation's power to obtain it; and the United States were at war, till they knew that their Envoys had negotiated a peace. Was it peace with Copenhagen after the attack made upon her? The Danes would tell a different story; and, said Mr. M., they are as much at peace as we are. If we are not at war, in what state are we, I repeat? Was there a third state, of war and no war, peace and no peace, something between both? Whatever were their wishes for peace, they should not say there was peace when there was no peace. He wished, as sincerely as he hoped to return home from hence,

that they might not have war with any nation on earth, and that their Ministers might make peace, but the nation had been attacked, and they must prepare for the event. If they meant to prevent the enemy from landing and pillaging the country on our water courses, with small parties, they must put arms into the hands of the militia to repel them.

Mr. M. said, he knew the opinion of no person within these walls, except himself. It had been his opinion, in which he wished he might be mistaken, that from the moment of the attack on the Chesapeake, they had been at war, and were now negotiating a peace. One word more, and he had done. The nation had been smitten by one of the great Powers of the earth—its sovereignty had been attacked. Let gentlemen say, who talked of peace, if this was not as great an outrage as if Norfolk had been attacked? If Norfolk had been bombarded, would it not have been an act of war? Mr. M. concluded by saying, he should be happy to be convinced that their situation was not as he had described it.

Mr. Alston said, whenever he differed from his colleague, who had just sat down, it was with reluctance, for there was no man whose sentiments and opinions he more highly respected; but he thought he could satisfy the gentleman that he was correct. Was every outrage committed by an officer of a foreign Power an act of war? If it were, would they now be sitting with their arms folded? Would not retaliation be the order of the day? Would they not have laid their hands on everything British within the United States? Certainly they would. An attack had been made. Had anything like retaliation ensued? No. A negotiation was pending on this very point, the result of which was not known. When it was known, and restitution and satisfaction for injuries were not made, he should believe they were in a state of war, but not till then. There was one opinion in which his colleague and he would never differ, that it was the interest of this country to preserve peace with all nations, as long as peace could with honor be preserved.

Mr. Rhea of Tennessee said, although he could not exactly hear what the gentleman from Vermont had said, he supposed the gentleman must have misunderstood him. Mr. R. said, he meant to arm the militia, so that the arms they held should be their own; and when the arms which the United States furnished them were worn out, he would replace them by a new supply. He would not only vote for arming the militia, but he would go with that gentleman for gunboats and fortifications; neither for these only, but for every species of defence, in every sense of the word. He held this to be an armed nation, possessing and maintaining its sovereignty by the right of arms.

It had been said that if the arms were held by the people they would be by the tenure at will of their rulers. Who were the rulers of the United States, but the people themselves? Such was not the case in European countries, where arms had been in possession of the Governments. Give to an ambitious man the command of a large standing army, and let him have power to force the arms from the hands of the people, and Mr. R. admitted he might do as he pleased; but so long as the people would support the Government, and keep their arms in their hands, so long would this be an independent nation. He did not at present think proper to adopt the amendment offered by the gentleman from Massachusetts, because it went to destroy the principle of the resolution. The question now was, would they or would they not arm the militia of the United States? The amendment offered by the gentleman from Virginia did not affect the principle, while that offered by the gentleman from Massachusetts did.

Mr. Lyon said, he was one of those who thought they had been at war these two months; they all knew that reparation had been asked from the British Government, and had not yet been received; this was their situation. Here they were, looking about, trifling, doing nothing at all, and neglecting to make the necessary appropriations. He hoped they would arm the militia as fast as they could, and in the best way that it could be done. He should, therefore, vote for the resolution.

Mr. Cook was in favor of both the amendments, because he considered their means limited, and because there was no danger of invasion. If the Indian tribes on the frontiers were in a state of hostility, would they think of building gunboats to oppose them? He should suppose not. The nation with whom they were about to go to war, had, at a time when the strength of this nation was not so matured, tried their strength with us on land. He was, therefore, not apprehensive of an invasion. But if they had a fleet sufficient to cope with the British at sea, and an overflowing Treasury, he should be opposed to this resolution as much as he now was. He thought those points which were most vulnerable should be first protected; he should then have no objection to arming any body of men who should be called into actual service. He thought the arms of the United States were best where they were, and of more use than if distributed in the hands of unprincipled persons, some of whom there were in every country. Our enemy was a maritime Power, and would attack us from sea; the money in the Treasury should take that direction, and its channel be turned to oppose that enemy. He hoped, therefore, that gunboats, fortifications, and ships of war, would be the objects of the attention of the House. It had been said that they were at war. Every gentleman in the House knew their situation; but they were not at war, according to the common acceptation of the word, for they had not recalled their Minister, or done any acts which usually denote immediate war. He entertained the same sentiments this session as he expressed at the last; and he wished that the fortifications of our ports and harbors had been then attended to.

The question on the amendment moved by Mr.

EPPES, was taken and negatived—ayes 54, noes 56.

The question on the amendment moved by Mr. CHANDLER, was also taken, and negatived—ayes 43.

The question recurring on the original resolution,

Mr. DAWSON said, he was much rejoiced at the almost unanimous expression of the opinion, that the militia of the United States should all be armed; the only question appeared to be, whether it should be done by the United States, or by the several States. He should vote for the resolution, whatever shape it might assume. Although aware of the difficulty in its way, he trusted a bill would be so formed as to avoid difficulties; he should vote for or against the bill, according to its form. If it were provided by the bill that the arms should be distributed among the people as their own, he should vote for it; if, on the contrary, they were to be kept in deposite, or held by the people at will of the United States, he should vote against it.

Mr. THOMAS said, he should vote against the resolution; because, were he to vote for it, he should commit himself to do a thing which he was not prepared to say he would agree to. Added to this, the subject was already before a committee, of which the gentleman from Virginia (Mr. DAWSON) was chairman. To act on a subject which was already before a committee, was contrary to any usage or practice. Before the question was taken, he would move to amend the resolution by striking out "ought to be made," and insert, after the words "resolved that," the words "the committee appointed to inquire whether 'any, and what, amendments are necessary to be 'made in the militia laws, be instructed to in-'quire into the expediency of making."

Mr. RANDOLPH said, it was obvious that this amendment was a complete substitute for the resolution; which, in its present shape, could be referred to that committee to bring in a bill. What was there in the resolution expressive of a doubt of the ability of the committee just named? The resolution, as it stood, said that provision ought to be made for arming the whole body of the militia. The amendment called for an inquiry into the expediency of making provision, to be conducted by a committee, (appointed on a different subject,) very competent, no doubt, to revise the militia laws.

Mr. FISK said he was in favor of the amendment. If they passed the resolution in its original shape, they declared that provision ought to be made. They ought not to pledge themselves to do a thing which might be impossible. He was in favor of an armed militia, and thought the arms which they held should be their own. In the same proportion that they increased the expectation to receive arms from the public Treasury, in the same proportion they relaxed their individual exertions, and the time would soon arrive when few people in the country would hold arms in their own right, but at the will of their rulers, who might be influenced by faction or party to make a bad use of them. He was against the resolution on another principle. While the United States held as many arms as she now did, she would have sufficient to arm all the force she would find it necessary to employ. He meant not to say, when he was up before, that the gentleman from Tennessee was averse to the protection of the country. He did not doubt his patriotism. Mr. F. was for speaking the language of truth, on which enemies and friends might rely. He was not for saying they would do this, when every man in the country knew that they could not do it.

The amendment offered by Mr. THOMAS was negatived—ayes 34.

The question was then taken on the original resolution, and carried—ayes 66.

The third resolution was agreed to without a division.

The Committee then rose and reported the resolutions, amended, as follows:

1. *Resolved*, That provision ought to be made, by law, for an adequate and comfortable support of such officers and soldiers of the late Revolutionary war as are still existing in a state of indigence in a country which owes its liberties to their valor.

2. *Resolved*, That provision ought to be made, by law, for arming and equipping the whole body of the militia of the United States.

3. *Resolved*, That provision ought to be made, by law, for procuring a formidable train of field artillery, for the service of the United States.

The House immediately took up the resolutions. The first was agreed to without a division. The yeas and nays being called for by Mr. RANDOLPH, and agreed to be taken on the second, the House adjourned without coming to a decision.

FRIDAY, December 4.

The SPEAKER laid before the House a letter and report from the Secretary of the Treasury, accompanied with estimates of the sums necessary to be appropriated for the service of the year 1808; also, a statement of the receipts and expenditures at the Treasury of the United States for one year preceding the first day of October, 1807; and a statement of balances of appropriations unexpended on the thirtieth of September, 1807; which were read, and referred to the Committee of Ways and Means.

Mr. CLOPTON, from the Committee of Revisal and Unfinished Business, to whom it was referred to examine the Journal of the last session, and report therefrom such matters of business as were then depending and undetermined, made a farther report thereupon; which was read, and ordered to lie on the table.

The bill sent from the Senate, entitled "An act to appropriate money for the construction of an additional number of gunboats," was read twice and committed to the Committee of the Whole to whom was committed, on the first instant, a bill supplementary to an act, entitled "An act for fortifying the ports and harbors of the United States, and for building gunboats."

ARMING THE MILITIA.

The House then resumed the consideration of the resolutions reported from the Committee of the Whole which were depending yesterday at the time of adjournment: Whereupon, the second resolution being again read, in the words following, to wit:

Resolved, That provision ought to be made by law, for arming and equipping the whole body of the militia of the United States.

Mr. Eppes said, notwithstanding the various amendments which had been proposed and negatived, he would offer another. No gentleman in the House was more favorable than himself to arming the militia, as far as their resources would allow; no gentleman would go farther towards that end than himself, though he was unwilling to say that the whole body of the militia should be armed when he knew that at this time it could not be done. If it were the intention of the House to arm a portion of the militia at the present time, and gradually to arm the remainder hereafter, in the name of common sense what objection could be made to expressing this intention in the resolution? To try the sense of the House, he then moved to strike out "the whole body of the militia of the United States" and insert "—— thousand of the militia of the United States, and for arming annually hereafter —— thousand, until the whole body of the militia of the United States shall be armed."

As the yeas and nays had been called on the original resolution, and as he wished his name to appear in opposition to the resolution in its present form, and in favor of it to a certain extent, he should call for the yeas and nays on this amendment.

Mr. Chandler said, unless he should hear something more in favor of this measure, he should vote against the amendment and against the resolution. He believed he should go as far as any gentleman in arming the militia; but the laws of the United States at this time provided that the militia should be equipped at their own expense. He was sensible that law did not operate fully. It had become the duty of the States to see this law carried into effect in the several States; some States had gone as far as to carry that law into operation: some citizens of some of the States had disposed of property which they could ill spare from their little all, or which should have been applied to the support of their families, for the purpose of arming themselves; and they were in a great degree armed. He did not know what details the bill might contain; but if he did not misunderstand gentlemen yesterday, it was said that as a part were now armed, the expense of arming would be lessened. He presumed the gentleman did not mean to say, because a part had armed at their own expense, sometimes at a great sacrifice, they should receive less advantage, if the whole were to be armed, than those who had taken no steps towards arming themselves. He wished to see how far the bill went before he committed himself, by voting for the resolution, to vote for arming the whole body at this time. He would observe that he was disposed to do as much as any other man in this measure; but he did not think this the proper shape in which it should have been taken up: so that, however anxious he might be to relieve that part of the community, from any part of the expense of arming, he could not vote for the resolution.

Mr. Bacon said, that the amendment proposed by the gentleman from Virginia was evidently predicated on the same principles as the original resolution which had been introduced by his colleague from the same State; the only difference which it created, was in limiting the extent to which that principle was to be carried. As he was opposed to that resolution wholly, in the shape and with the views for which it was professedly introduced, he should in like manner be opposed to the amendment, which only went to limit and modify that which was in itself essentially exceptionable. The question upon which they were now required to give their affirmative or negative, as it was offered in the words of the resolution, presented itself in somewhat of a delicate and embarrassing shape. If the mere form of the proposition only was considered, it was simply whether they would take upon themselves the Constitutional duty which was assigned to them of providing for arming the militia of the United States? Though he was, as he trusted, as much in favor of a faithful performance of this Constitutional duty as any man in that House, were it brought before them in a proper shape, at a proper time, and upon proper and equitable principles, yet as the present resolution was not in his opinion introduced in a proper shape, at the present time, or proposed to be carried into execution upon principles which were either politic or equitable, he should be constrained to give it his decided negative in every stage of its progress. It was agreed on all hands that as the power of arming, organizing, and disciplining the militia was conferred by the Constitution upon Congress, so it was at all times their duty to see that this power was faithfully executed in the manner best calculated to insure the great objects, which were intended to be thereby accomplished; which were, that they might exhibit to the world the spectacle of an efficient body of armed freemen, who might be both ready and able on all necessary occasions, either to repel an invading foe from abroad, or to resist internal commotions or domestic usurpations at home. The mode in which these great objects might best be accomplished, was left to the wisdom of Congress to decide. Let us then see, said Mr. B., what in the execution of this power has already been done by the General Government? By a law passed some years since they have provided, that the militia of the United States shall be organized and disciplined, and that every person liable to do duty therein shall provide himself with a good and sufficient musket, with all other equipments necessary to furnish him as a soldier. Having done this, and pointed out clearly to the Legislatures of the several States one uniform mode in which this object should be carried into effect, the General

Government had so far performed their duty. Then the concurrent duties of the several State Governments began; and how had the latter been performed? Whenever the general law of the National Government had been aided by the vigorous and corresponding exertions of the several States, its provisions had been effectual, and the objects proposed by it in a great measure, though not completely answered; and if in many parts of the Union this was not the case, it is not to be attributed to the defects of the general system, but to the faulty execution of that system by some of the State Governments. They were told however, that, notwithstanding all that had been done, many and great deficiencies of arms still existed in many of the States, and indeed this fact amply appeared from the official returns which were laid before this House in the course of the last year. How was this deficiency proposed to be supplied? It was by providing so many arms, as, in addition to those which have already been provided in the several States, should be sufficient to arm the whole body of the militia. Though this mode of effecting the object was not necessarily implied in the words of the resolution before the House, yet it was avowed as that in which it was designed to be executed, by the mover and others who have advocated it. Whether the arms, when provided, were to be placed in the hands of the several State Governments, or in those of the individuals of the militia by way of loan or deposit, or whether by way of absolute and unqualified gift, was not precisely avowed: either mode must be liable to very great and insurmountable objections. The latter, however, would be so little calculated to attain the object intended, would be liable to so great abuse, and so totally destitute of responsibility for their safe-keeping and proper use, that it was presumed that could not be intended. If a musket should be put into the hands of a militia man, and subject altogether to his own control and disposal, he would be under no obligation to keep it in repair, or to keep it at all, he might alienate it to any one that he pleased, not belonging to the militia, or might even export it from the country, and then being found deficient, and not being compelled to provide and keep arms at his own expense, might call upon Government for another; and it would probably be found that after distributing sufficient to arm the whole body of the militia, and expending millions of dollars in that object, the militia itself would be as illy supplied as when they began. It must undoubtedly then be the former mode of depositing them by way of loan with the several States, to be held for the occasional use of their respective militia, in such way and upon such a tenure as Congress should prescribe, that the friends of the system proposed to be effected by the present resolution, would wish it to be carried into effect. This mode was likewise on a number of grounds deemed by Mr. B. to be highly exceptionable. It was so, in the first place, on general principles, as it went to defeat one of the very objects which it was the design of the Constitution to secure by an armed and disciplined militia, composed of the great body of the citizens. Those objects it was apprehended were twofold. They were not only that the great mass of the people should be prepared on any sudden emergency to oppose the sudden invasion of a foreign external foe, and to suppress internal commotions, but that they should at all times be both ready and able to resist domestic usurpation, and to defend themselves against those arbitrary exactions and unconstitutional oppressions, with which they might in process of time be loaded, even by the machinations of their own rulers: for this purpose it was essential that the arms which they might be called upon to wield should be exclusively their own, subject to their entire control, and which no power on earth had a right lawfully to wrest from their hands. But if, under the show of arming the militia, the Government undertook to provide for all the arms in the nation, to deposite them in such places as they may appoint, to be used at such times and in such manner as they should prescribe, and to be recalled when they should think fit, what became of the substantial independence of the citizens, and where were the effective means which they would in a little time possess for asserting it, should they ever be reduced to that necessity?

The absurdity of a nation's holding their arms subject to the disposition and control of any foreign Government, whose invasions they might be called upon to repel, would at once be seen; and yet it was but little less so that they should hold them upon the precarious tenure of the will of their own Government, who, should they ever become profligate enough to attempt the oppression of the citizens, would first be careful to withdraw from them these, their only efficient means of defence and resistance. It was therefore only by taking effectual measures that every citizen shall furnish and constantly keep at his own expense those arms which might be necessary for his defence against external force and internal oppression, that the two great objects of an armed and disciplined militia could be insured. The reverse of this it was conceived would be the effect of the project which was now proposed.

The same effects which the adoption of the proposed system would have upon the real independence of every citizen, as respected his relation to the Government generally, the same would it produce upon the substantial sovereignty and independence of the several States considered in reference to their relation with the General Government. He had heard on a late occasion in that House much eloquent declamation on the importance of our respecting the rights of the State Governments, and the danger of our encroaching in the least degree upon their Constitutional sovereignty. To the justice of these general propositions he readily assented. But in order that the States should be enabled effectually to assert those rights, or to resist those encroachments, it was necessary that they should have the physical means of doing it in their own hands and subject only to their own control. This, said he, they have already in a great measure acquired under the present system of arming their militia

and will probably in a few years effectually accomplish, if we encourage and stimulate them to go on; but if they are hereafter to receive their arms from the General Government, and to hold them subject to its orders and disposal, their real and substantial independence would be no more, as they would not possess in their own right the only effectual means of defending it in the last resort. Let gentlemen then, who were so zealously attached to the rights of the States, take care that they did not, under the semblance of a favor conferred, completely sap the foundation on which the assertion of those rights rested.

But in addition to these general considerations of policy, growing out of the general system of our national defence, there were others, arising from a view of the different situations of the different States, in respect to the actual situation of their arms, and of the unequal exertions that they had already made for the purpose of arming and equipping their respective militias, which would demonstrate that the system now proposed could not be carried into effect, except upon principles clearly unequal and unjust. It was by no means with a view of creating invidious distinctions, or drawing disadvantageous comparisons between the different States, in respect to the different degrees of patriotism, energy, and attention to their internal defence, which they had heretofore exhibited, that he called the attention of the House to this view of the subject. Such comparisons and distinctions were always of a delicate and undesirable nature, and ought, if possible, to be studiously avoided. But, when the House was so pertinaciously pressed with a measure which was so extremely unequal in its operation, he should do injustice to his particular constituents, and betray the trust reposed in him as a Representative of Massachusetts, if he failed to urge such considerations upon the attention of the House. It would appear, by the returns laid before the House in the course of their last session, that the State of Massachusetts, with a population of somewhat more that 500,000, and a militia of 54,196, had already from her own resources provided for her militia, or rather, in obedience to the existing law, the individuals of that militia had provided themselves with 47,551 muskets; while the State of Virginia, with a population of more than 700,000, and a militia of 62,017, had but 12,341 muskets. He mentioned these two States particularly, because they furnished, in a striking point of view, an evidence of the great disparity which existed in the efforts which different States had heretofore severally made for the purpose of arming their militia.

The same relative situation would be found to exist between many others of the States; and it would appear that the Eastern States generally possessed a much greater number of arms in proportion to their population, or the number of their militia, than the Southern or Middle States. How had this superiority been acquired? By long, arduous, and persevering exertions; by enforcing rigidly the requisitions of our existing law, and that, at a great expense of labor and money; and it was for the want of having made correspond ing exertions on their part, that many of the other States were now found so deficient. Could it, then, be expected that the State of Massachusetts would readily consent—after arming her own militia solely from her own resources—that the general resources of the nation, to which she contributed so large a share, should be applied to supply the great deficiencies existing in those States who had made little or no exertions to help themselves? Such a proposition was, on the face of it, partial, unequal, and unjust, and so far from operating as an encouragement to continue in their well-doing, was reversing every principle of justice heretofore known. It was taking from him who, by his fidelity and industry, had gained ten talents, a part of those which he had gained, and bestowing them upon him who by his negligence and sloth had gained but a single one. But, we were told yesterday by a gentleman from Kentucky, (Mr. Lyon,) that his constituents were extremely deficient in arms, and that he did not know how they could possibly acquire them, unless by the aid of the General Government. If the gentleman intended to be understood that arms were not to be purchased at all in the country, for money, it would be as much out of the power of the nation to provide them as it was for the State of Kentucky. If the gentleman meant that the State had not the pecuniary means of obtaining them, he could not think his suggestion to be correct. For his part, Mr. B. had long formed a very high opinion of the increasing wealth and resources of that respectable State, and would now, by no means consider her as one of the paupers who were like to fall upon the nation for support. But, if the gentleman's constituents were really at a loss to know how they could possibly arm themselves, let that gentleman himself inform them how his former constituents in a Northern State had, in so great a degree, accomplished that object. It was by strenuous, and persevering exertions; by liberal sacrifices of money, and by laying their shoulders closely to the wheel, that they had already moved it so far. Let the delinquent States first do this, and it would then be time enough to call upon Hercules to help them. It ought well to be considered what effect a declaration on the part of the General Government that they would take upon themselves to arm the whole body of the militia, would, at this time, have upon the several States. It is well known, said Mr. B., that, in most of them, great exertions are now making to accomplish that object in their own way, and from their own means; but, when this declaration is once known to them, every further effort on their part will be completely paralyzed. Those who had already done something, would, if possible, retract what they had done, and those who had done nothing, would still continue to do nothing. Indeed, the very arms which were now in the hands of our militia would, probably, if the proposed system were to obtain, soon, in a great measure, disappear; for what motive could a man have to keep a musket which he had procured at his own expense, when Government had pledged itself to provide

one for him whenever he was found deficient? And Mr. B. presumed that, in this way, the forty-seven thousand muskets now returned by the State of Massachusetts, would very soon be reduced to a very inconsiderable number. In this management there would be nothing unfair, for, why should a citizen of that State continue to provide and maintain his own arms whilst the citizen of another was provided for at the expense of the nation?

But, whilst he maintained that the principles of good policy and equal justice both concurred in requiring that the several States should be left to arm their own citizens, in their own way, and at their own expense, Mr. B. said, if any great emergency nevertheless required that arms should, at all events, be put into the hands of all the citizens, and that a great national calamity could be averted in no other way, he would consent that it should be done at the general expense of the nation, however unequal might be its operation upon the interests of the respective States. To prove that such an emergency did now, in fact exist, they were told by some gentlemen, that they were now in an actual state of war with Great Britain, and by others, that they were at best on the very eve of a war. Which of these positions was the most correct was not very material to the present question, though he was inclined to think the latter. Whether the war was actual or expected, it was important for the House to consider what kind of a war it would probably be, and what description of force would be required on their part to carry it on; what were our weak points, and what were our strong ones. Did any man suppose it would be a war of invasion on the part of the enemy, or that the body of the people would be called upon to defend the interior territory of the nation? If it were to be so, was not that already our strong point of defence? For, said he, notwithstanding all the deficiencies which yet exist in the arms of our militia, it may, probably, be safely asserted that, in proportion to our numbers and resources, we are already the strongest nation on earth in an effective body of armed and disciplined citizens. But, there were other points, on which every one knew that they were comparatively weak, and those were their harbors, their cities, and their seacoast generally; and it was here, at the same time, that the enemy was best able to attack and molest them; it was here only, indeed, that she could. Did not policy, then, call upon them, as well as they were able, to secure the weaker and most assailable points first? This was certainly not to be done by the means of small arms, but by heavier weapons. But, what sort of policy was it which dictated the present measure? Was it not to fortify still further the strong point of their defence, upon which they could have no apprehension of being assailed, and to neglect those (for neglect them in some measure they must, if they first expended their resources upon other objects,) which were confessedly the most weak and vulnerable, and upon which only, they expected to be attacked? At this system of policy he was truly astonished, and not less so, to see that it was advocated by some gentlemen of high standing in that House, and of great celebrity in the nation.

He concluded by saying, that from the view which he had of the general impolicy of the proposed measure, when considered in reference to the general principles of liberty and the Constitution; from the inequality of its operation upon the different portions of the Union; from the effects which it would have upon the policy of the several State Governments; and from its not being a measure calculated in any degree to meet the exigency of the times, he should not perform his duty to the people, or the State which he had the honor in part to represent, should he have neglected to express his pointed dissent therefrom, both in the shape in which it was presented to the House by the amendment before them, or in the more extensive one of the original resolution.

Mr. WITHERELL had wished this resolution to have been adopted by a silent affirmative; but as it had not, he would make a few remarks on the subject. It had been observed by the gentleman last up that the Northern States already were armed in a great degree, and that it would be a partial measure. Mr. W. believed that it was intended as a measure of defence, and that every necessary mode of defence should be adopted—that the back as well as the front fences should be put up. Upon this view he could not avoid surveying those ports of the Union with whose situation he was acquainted. He had extended his eye along the coast, from New Orleans to the District of Maine. He beheld a long line of ports vulnerable to attack from sea. It was necessary, it was generally allowed, not only to resent the injury already received, but to provide against others. It was, therefore, necessary to arm the seaports. Was this to be effected with muskets or pistols? No; with gunboats, with ordnance, ships-of-the-line, and fortifications. Who was to pay for these? The Secretary of the Treasury. Who furnished him with the money? The people of Tennessee as well as other States. But the people of Tennessee wanted no gunboats, and, therefore, could not be obliged to pay any part of this, except they allowed that all the States belonged to one great family. Reasoning thus, it appeared to him that the principle laid down by the gentleman from Massachusetts was perfectly inapplicable. Mr. W. could not see the evil likely to arise from adopting this resolution. If the committee should report a bill containing incongruous provisions, it would be time enough then, for the House to reject it. Every gentleman must be satisfied that they could not come at facts on any subject, except they undertook to analyze it. He was not for taking out of one person's pocket and putting into another, but he was in favor of the object of this resolution—which was desirable to the people of the Union, and must be so to every gentleman of the House—that the whole of the militia of the United States should be armed. He believed that there was ingenuity enough in the House to accomplish a removal of those difficulties which now existed. Some States

which had money to apply to that purpose could not procure arms, for they had not established manufactories of them. He saw no difficulty in adopting this resolution, that it might be ascertained whether it were practicable to arm the whole body of the militia of the United States, or not.

Mr. SOUTHARD said, one object of the establishment of this Government was for the purpose of preparing a certain defence against foreign enemies, and he found the Constitution to contain in its preamble the following words: "We, the 'people of the United States, in order to form a 'more perfect union, establish justice, insure do-'mestic tranquillity, *provide for the common de-'fence,*" &c. The question now before the House was, whether it was their duty to attend to the particular objects on which they were now required to decide, and whether this resolution was really necessary to carry that object into effect. He was of opinion that however deficient the States might have been in providing arms for the defence of the Union, this Government should never overlook that object. If there were a deficiency of arms on the part of the States, it became the bounden duty of Congress to supply it. As to the observations of the gentleman from Massachusetts, that it would bear unequally on those States which had already provided arms, he admitted there was some truth in it, and that the State of Massachusetts deserved great credit for her conduct. But though the State of Massachusetts might be well armed and prepared for defence, he was confident this was not the case in all the States of the Union. The deficiency of arms in the States had arisen from several causes: one of which was a neglect in the State Legislatures to erect manufactories, and it was too late for them now to commence that undertaking. The House were every day told that the country was on the eve of a war; ought they not now then to place arms in the hands of every man in the United States capable of bearing them? The House had been told that empires and kingdoms had been lost, and Mr. S. thought that too nice a calculation on this subject ought not to affect the general measure. He apprehended, that if the resolution were agreed to, ample security would be given to the General Government for an equal distribution of arms. If this were not the case, a little inequality ought not to influence their decision. Mr. S. believed that every man should hold arms in his own hands.

The gentleman from Massachusetts had said that the expected war might be such that no portion of the militia would be called into service; but if a war took place at all, it would consist not only of piracy by sea, but of robbery by land; the enemy would land for the purpose of plunder, and ought to be checked on the first onset. If ever there was a time which required that the whole strength of the country should be called out, this was that time.

There was another reason why Mr. S. thought the General Government should pay attention to the placing arms in the hands of the militia; many arms now in the hands of the militia were only fit for the purposes of musters; they were not fit for service, or for contending with an enemy; they were merely fit for the common use to which they are now applied.

Notwithstanding he thought the whole militia of the United States ought to be armed, he was in favor of the amendment under consideration. There were a number of arms now in the possession of the United States which might be given to the different States without injury to the United States; and he was in favor of a partial appropriation for the purpose of arming the militia at present. He thought that Congress should never lose sight of the object of general defence, should always keep it in view, and that although peace prevailed, they should not thereby be lulled into security. He hoped Congress would now make such a provision as would not disgrace the importance of the object, nor yet make too large an appropriation. He should always be willing to create such a defence for the country as would guard the United States against imposition, and be sufficient to repel invasion.

Mr. RANDOLPH said he could not conceive what purpose the gentleman who moved this amendment had in view, unless indeed that a committee should be raised on a resolution totally different from that which Mr. R. had offered to the House. He had hoped that the advice yesterday given by his worthy friend from North Carolina (Mr. MACON) on this subject would not have been thrown away, and that gentlemen would not have continued to make objections to this resolution. If the amendment at present under consideration were agreed to, other gentlemen would make other amendments to details of the resolution, and the same objections which had been once made would be repeated again and again. Did the House recollect that the honorable member from North Carolina (Mr. BLOUNT) was now anxious to call up an important bill for the defence of our seaports, and should they spend time in this discussion, which would more properly take place on the bill which would be brought in, in pursuance of the resolution?

In order to get over all this detail, he begged leave to move the previous question on the amendment offered by the gentleman from Virginia, (Mr. EPPES,) and upon every other which should be proposed to this resolution.

The SPEAKER decided that the previous question could not be taken on an amendment.

Mr. EPPES said he certainly should not take up the time of the House in discussing details: this was not a question of detail at all. The principle involved in it was this: Would they now arm the whole body of the militia, or that part of them which should be called into actual service? Mr. E. did not wish to arm the whole, and wished the House to decide whether they would at this time arm the whole. He was as little in the habit of consuming the time of the House as any gentleman on the floor; but he had considered this amendment as important, inso-

much that with this amendment he should vote for the resolution; without it, he should vote against the resolution. He called for the yeas and nays on the amendment, to show on the journals that although he should vote against the resolution in its original form, yet he was willing to go as far at the present time in the object contemplated, as any gentleman in the House.

An appeal being made from the decision of the Chair which had just taken place, and the question being put, "Is the decision of the SPEAKER correct," it was decided in the affirmative—yeas 111, nays 16, as follows:

YEAS—Lemuel J. Alston, Willis Alston, jr., Ezekiel Bacon, David Bard, Joseph Barker, Burwell Bassett, John Blake, jr., Thomas Blount, John Boyle, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, George W. Campbell, John Campbell, Peter Carlton, Epaphroditus Champion, John Chandler, Martin Chittenden, Matthew Clay, John Clopton, Orchard Cook, Jacob Crowninshield, John Culpepper, Richard Cutts, Samuel W. Dana, Ezra Darby, John Davenport, jr., Josiah Deane, Joseph Desha, Daniel M. Durell, William Ely, John W. Eppes, William Findley, James Fisk, Meshack Franklin, Barent Gardenier, Francis Gardner, Peterson Goodwyn, Isaiah L. Green, John Heister, William Helms, William Hoge, James Holland, David Holmes, Benjamin Howard, Reuben Humphreys, Daniel Ilsley, Robert Jenkins, Richard M. Johnson, Walter Jones, James Kelly, Thomas Kenan, Philip B. Key, William Kirkpatrick, Nehemiah Knight, John Lambert, Joseph Lewis, jr., John Love, Robert Marion, Josiah Masters, William McCreery, William Milnor, Daniel Montgomery, jr., John Montgomery, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, John Morrow, Gurdon S. Mumford, Thomas Newton, Wilson C. Nicholas, Timothy Pitkin, jr., John Porter, John Pugh, Josiah Quincy, John Rhea of Tennessee, Jacob Richards, Matthias Richards, Samuel Riker, John Rowan, John Russell, Ebenezer Seaver, James Sloan, John Smilie, Jedediah K. Smith, Samuel Smith, John Smith, Henry Southard, Clement Storer, Lewis B. Sturges, Peter Swart, Samuel Taggart, Benjamin Tallmadge, David Thomas, John Thompson, Abram Trigg, George M. Troup, Jabez Upham, James I. Van Allen, Philip Van Cortlandt, Nicholas Van Dyke, Archibald Van Horne, Killian K. Van Rensselaer, Jesse Wharton, Robert Whitehill, Isaac Wilbour, Marmaduke Williams, Alexander Wilson, Richard Winn and James Witherell.

NAYS—William W. Bibb, Howell Cobb, John Dawson James Elliot, James M. Garnett, Edwin Gray, John Harris, Edward Lloyd, Matthew, Lyon, Roger Nelson, John Randolph, John Rea of Pennsylvania, Lemuel Sawyer, Dennis Smelt, Richard Stanford, and David R. Williams.

Mr. RANDOLPH now called for a division of the question on the amendment, so as to take it first on striking out the words proposed from the resolution; and the yeas and nays being called by Mr. RANDOLPH on this question, to wit: on striking out of the resolution the words "whole body of the militia of the United States," were—yeas 48, nays 78, as follows:

YEAS—Willis Alston, jun., Ezekiel Bacon, David Bard, Joseph Barker, John Blake, jun., Robert Brown, Joseph Calhoun, Peter Carlton, Orchard Cook, Jacob Crowninshield, John Culpepper, Richard Cutts, Ezra Darby, Josiah Deane, John W. Eppes, William Findley, James Fisk, Francis Gardner, Isaiah L. Green, John Heister, James Holland, Reuben Humphreys, Daniel Ilsley, Robert Jenkins, Nehemiah Knight, John Lambert, John Love, Josiah Masters, William Milnor, John Montgomery, Jeremiah Morrow, Gurdon S. Mumford, Wilson C. Nicholas, Matthias Richards, Samuel Riker, Ebenezer Seaver, James Sloan, John Smilie, Jedediah K. Smith, Henry Southard, Clement Storer, Peter Swart, David Thomas, James I. Van Allen, Philip Van Cortlandt, Robert Whitehill, Isaac Wilbour, and Marmaduke Williams.

NAYS—Lemuel J. Alston, Burwell Bassett, William W. Bibb, Thomas Blount, John Boyle, William A. Burwell, William Butler, George W. Campbell, John Campbell, Epaphroditus Champion, John Chandler, Martin Chittenden, Matthew Clay, John Clopton, Howell Cobb, Samuel W. Dana, John Davenport, jr., John Dawson, Joseph Desha, James Elliot, William Ely, Meshack Franklin, Barent Gardenier, James M. Garnett, Peterson Goodwyn, Edwin Gray, John Harris, William Helms, William Hoge, David Holmes, Benjamin Howard, Richard M. Johnson, Walter Jones, James Kelly, Thomas Kenan, Philip B. Key, William Kirkpatrick, Joseph Lewis, jr., Edward Lloyd, Matthew Lyon, Nathaniel Macon, Robert Marion, William McCreery, Daniel Montgomery, jr., Nicholas R. Moore, Thomas Moore, John Morrow, Roger Nelson, Thomas Newton, Timothy Pitkin, jr., John Porter, John Pugh, Josiah Quincy, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, John Rowan, John Russell, Lemuel Sawyer, Dennis Smelt, Samuel Smith, John Smith, Richard Stanford, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, Abram Trigg, George M. Troup, Jabez Upham, Nicholas Van Dyke, Archibald Van Horne, Killian K. Van Rensselaer, Jesse Wharton, David R. Williams, Alexander Wilson, Richard Winn, and James Witherell.

Mr. EPPES said since his purpose had been defeated by a division of the question, and as he should vote against the original resolution, and wished to show by his vote to what extent he would go, he would submit an amendment, on which he wished no debate, and called for the yeas and nays upon it. He then moved to insert at the end of the resolution these words: "By 'providing at the present time for the purchase 'of —— thousand arms, and annually hereafter 'for the purchase or manufacture of —— thou-'sand, until the same shall be completed."

The yeas and nays being taken on this question, stood—yeas 41, nays 86, as follows:

YEAS—Willis Alston, junior, David Bard, John Blake, jun., Robert Brown, Joseph Calhoun, George W. Campbell, Peter Carlton, Orchard Cook, Jacob Crowninshield, John Culpepper, Richard Cutts, Ezra Darby, Joseph Desha, Daniel M. Durell, John W. Eppes, William Findley, Francis Gardner, Isaiah L. Green, John Heister, James Holland, Robert Jenkins, Nehemiah Knight, John Lambert, John Love, William Milnor, John Montgomery, Jeremiah Morrow, Gurdon S. Mumford, Wilson C. Nicholas, Matthias Richards, Samuel Riker, Ebenezer Seaver, John Smilie, Jedediah K. Smith, Henry Southard, Clement Storer, Peter Swart, David Thomas, Robert Whitehill, Isaac Wilbour, and Marmaduke Williams.

NAYS—Lemuel J. Alston, Ezekiel Bacon, Joseph Barker, Burwell Bassett, William W. Bibb, Thomas

Blount, John Boyle, William A. Burwell, William Butler, John Campbell, Epaphroditus Champion, John Chandler, Martin Chittenden, Matthew Clay, John Clopton, Howell Cobb, Samuel W. Dana, John Davenport, jun., Josiah Deane, James Elliot, William Ely, James Fisk, Meshack Franklin, Barent Gardenier, James M. Garnett, Peterson Goodwyn, Edwin Gray, John Harris, William Helms, William Hoge, David Holmes, Benjamin Howard, Reuben Humphreys, Daniel Ilsley, Richard M. Johnson, Walter Jones, James Kelly, Philip B. Key, William Kirkpatrick, Joseph Lewis, jun., Edward Lloyd, Matthew Lyon, Nathaniel Macon, Robert Marion, Josiah Masters, William McCreery, Daniel Montgomery, jun., Nicholas R. Moore, Thomas Moore, John Morrow, Jonathan O. Mosely, Roger Nelson, Thomas Newton, Timothy Pitkin, jun., John Porter, John Pugh, Josiah Quincy, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, John Rowan, John Russell, Lemuel Sawyer, James Sloan, Dennis Smelt, Samuel Smith, John Smith, Richard Stanford, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, John Thompson, Abram Trigg, George M. Troup, Jabez Upham, James I. Van Allen, Philip Van Cortlandt, Nicholas Van Dyke, Archibald Van Horne, Killian K. Van Rennselaer, Jesse Wharton, David R. Williams, Alexander Wilson, Richard Winn, and James Witherell.

The question recurring on the original resolution—

Mr. QUINCY said, before the question was taken, he would very briefly give his opinion on the subject. It seemed to him that all the arguments against the adoption of this resolution rested upon the false basis, that in voting for this resolution they committed themselves to vote for the bill. A provision was spoken of as to the mode of accomplishing this object, and gentlemen who had argued against this motion had shown that a particular mode was unequal as it respected the particular situation of different States. As it respected the mode, whether by the States or by individuals, or in whatsoever mode should be provided by law, it was not implicated by passing this resolution; and he could not bring himself to reject a proposition of this kind, because it appeared to him that under a resolution of this nature some beneficial plan might be adopted. He would state one: they all knew that our public arsenals were at present supplied with a quantity of arms, perhaps sufficient for all national purposes, and that a part of the whole body of the militia were supplied. There being an annual surplus of revenue, was it not wise in the House to take into consideration the best mode in which to dispose of that surplus? Was it not wise to establish places of deposite for arms in every part of the Union? There might be national or State deposites, according to a certain ratio. A plan of this kind might be adopted, and would it not be wise to do it? It was known that there were arms now in the hands of the militia, but that there was no similarity in their size or caliber; if there were a general uniformity in this respect in each State, there was not in the several States. This being the case, although the arms might be in themselves perfectly good, and might resist immediate invasion, yet if at any time the militia of any two States should have occasion to act in conjunction, great difficulty might arise from their arms not being uniform, but of different qualities. Now it did seem to Mr. Q. very wise, if there were a surplus of revenue, to establish in each State a depot of arms. In voting for this resolution, he should not consider himself as pledging himself on the bill that might be introduced, unless its details should meet his approbation.

Mr. NICHOLAS said he had voted for the amendment which had been offered, because he did not think the whole body of the militia of the United States should be armed at once. He had long seriously considered this subject, and had been long impressed with the belief that the permanence of a Government depended upon the people being always in a situation to defend themselves not only from external but internal violence. This was not with him the opinion of this day or yesterday, not brought to his mind from the exigency under which they now acted, but it was of long standing and retained by him after mature reflection. One argument which had been used on this occasion had great weight with Mr. N. and ought to have with every member in the House, that they must have armies, which would be equally useful with the militia, who could not be relied on solely for defence, from various reasons; and because the employment of militia would be more expensive, and much more inconvenient to the people. An army would be more convenient, and, were the nation armed, there would be no difficulty in disbanding it. Were the nation not armed, instead of achieving good, they might turn Congress out of doors and become masters instead of servants.

On another ground he had doubted on the proposed resolution. One of these things must be done: the arms when purchased must be either put into the hands of the people as their own, or must be stored in arsenals. Let it be remembered, said he, when we speak of putting arms into the hands of the people, and contemplate the erection of deposites for those arms in the several States, that the strength of these arsenals will be more likely to be employed against the Government than for it.

Upon the score of the inequality of such a provision on the several States, there appeared to be a difference of opinion. Mr. N. hoped a liberal policy would prevail. The State of which he had the happiness to be in part a Representative, had made provision for this object. The inequality which would arise would be nothing in comparison with the magnitude of the object to be accomplished, to arm the nation not only from external enemies, but from enemies of every description.

The gentleman from Massachusetts seemed to think that the Constitution required the arming and disciplining the militia, and that Congress had required the States to pay attention to it. Had the States done it? Mr. N. said they had not; and if the gentleman would look at the returns from every State, they would find that the

people were not completely armed in any State. Had Congress, then, done their duty in this respect? They certainly had not.

Mr. N. did believe that the object embraced by the resolution was most important; that the interest of the nation required, and the Constitution itself imposed a duty upon them to place arms in the hands of the people. These reasons would govern his vote.

Mr. TALLMADGE said it was not surprising that upon an occasion like the present there should be different sentiments entertained by different gentlemen in the House. No gentlemen would go further than he would in putting the country in such a state of defence as its safety might require; but in doing this he should certainly differ with many gentlemen as to the mode.

Gentlemen had said they should vote in the affirmative on this resolution, because it was general. It was because it was so general that Mr. T. should vote against it: it went to say that they would pledge themselves to arm all the militia of the United States. This did not meet his idea of a resolution on this subject. If gentlemen wished to bring this subject before the House, let them bring forward a resolution to appoint a committee to inquire into the expediency of amending the laws respecting the militia, and he would give it his free and full assent; but he would not give his vote in support of a measure which would go to compromit the Government. It appeared to him that gentlemen advocated the adoption of this resolution in its present form, from an idea that the individual States were unable to arm themselves. Mr. T. said it was by no means proved to the satisfaction of his mind that the Legislatures of the several States had not made provision, or that they were unable to arm themselves. In making this remark he certainly judged from the part of the country from which he came. The Speaker (Mr. VARNUM) certainly knows, said he, what exertions have been used in the State in which he resides, as well as that which I have the honor to represent, to procure arms; perhaps some of the Southern and Western States had made the same provision.

The Government of the United States had acted under that part of the Constitution which required them to arm and discipline the militia of the United States. In 1792, Congress passed a law containing a great many provisions for organizing the whole militia of the United States. He would not now detain the House in stating particularly, but generally, the provisions of that law. Everything done by this Government to organize the militia of the several States was to be done under the direction of their Legislatures. Subsequent to this, a law had been passed, directing that the President of the United States should receive from the Executives of the several States a return of the different forces of each State; and these returns were now on their table. It appeared that these laws were not complied with; for, if they had been, these returns would have shown the full and effectual force of the Union. The first law contained a most emphatic injunction that the whole militia of the United States, from eighteen to forty-five, should be completely imbodied; not only so, but that every man was to be provided at his own expense with arms, and that these arms should be of a certain quality and size. If any gentleman here had ever known the inconvenience of cartridges of different sizes, he would see the necessity of the latter provision in the law. If the States had properly carried this law into execution, gentlemen would never have heard an argument in this House relative to arming the militia. If both these laws, by which the United States obliged themselves to make provision of certain arms, to be delivered to the several States, for the use of the militia, expressly—if these had been complied with, and those arms purchased had been delivered to the States—what more was necessary to be done? Had not Congress carried into effect the Constitutional provision?

If gentlemen meant to originate a bill to oblige the General Government to purchase arms and furnish them to the States, he presumed they would not vote against this resolution; but, for himself—considering it as too broad, and fully believing that the situation of the country did not require them to go into this expense, willing as he was to see the whole militia armed—he must give his negative to the resolution.

Mr. W. ALSTON said, when he yesterday addressed the House on this subject, he had felt a strong inclination to vote for the resolution, that it might go to a committee; but, from the course of proceeding this day, when he saw gentlemen, with all their professions of a contrary determination, vote against the modifications offered to the resolution declaratory of an intention gradually to arm the militia, he lost all hope of the bill being so brought in. He was not prepared to vote for a bill bottomed on a resolution like the present. The committee to whom it should be referred in its present state must not only provide for arming the whole body of the militia, but for equipping them. Was the House prepared to say that it would arm and equip all the militia of the Union? If the amendment offered by the gentleman from Virginia had been adopted, they would then have known the grounds on which they were voting; but gentlemen who had declared themselves opposed to arming the whole militia at one time had voted against the proposition for arming them gradually. Taking it in this point of view, he could not vote for the resolution; nor could he expect that the House would be seriously disposed to arm the whole militia, and afterwards equip them.

Mr. ELY said, the proposition now before the House was plausible, but there appeared to him to be a great objection to such a proceeding, from the circumstance that there was now in the arsenals of the United States a large quantity of arms—130,000 stand—a quantity in the hands of the militia, and a quantity in possession of the States. Exclusive of these, there were not 2,000 stands of arms in the United States. There were a few imported arms exposed to sale, and the United States annually manufactured about 10,000 stand

—last year, not so many. Where could more arms than these be obtained? They could not be obtained from private manufactories. And gentlemen were now talking of a broad proposition immediately to purchase four or five hundred thousand stand, when not any portion of that number could be obtained. The nations of Europe would not sell their arms, nor could arms anywhere be purchased. They might do one thing, which he should be very glad to see—they might increase their Armory Establishment, so as to manufacture twice as many arms annually as were manufactured at present. For his own part, he did not believe that there was half the quantity of arms in the arsenals of the United States which there ought to be; and it would be a very long time before they could accumulate a proper quantity. If gentlemen could inform him where these arms were to be had, he should think more about listening to the proposition.

When the United States began their Armory Establishment, they went on very slowly. It was several years before they could manufacture more than 1,200 a year. This he knew to be a fact. Gentlemen talked of private manufactories—they must, however, teach workmen before they could be brought into operation. An experiment made a few years ago in procuring arms from a private manufactory was unsatisfactory. The arms there manufactured were so incomplete and insufficient that they could not answer any profitable purpose. Skilful artists in this branch of mechanism were not then to be met with, nor were they now.

Under all these circumstances, Mr. E. saw great difficulties in this business. He was as much in favor of the people being armed as any man in the House, and wished that they were armed; but he was also decidedly of opinion that the arms they held should be their own. He should be sorry to say that independent farmers should be obliged to the United States for the arms they held, and yet he wished they all should be possessed of arms. He did not believe that it was practicable to carry the proposition into effect in any number of years that had been mentioned, with our present resources. If these arms were to be given into possession of the people, to be returned at stated periods, there would be an annual deficiency of perhaps 10,000 stand. Under all these circumstances, he felt very easy about this resolution.

The main question on the second resolution was decided by yeas and nays—yeas 72, nays 55, as follows:

Yeas—Lemuel J. Alston, Burwell Bassett, William W. Bibb, Thomas Blount, John Boyle, William A. Burwell, William Butler, George W. Campbell, John Campbell, Martin Chittenden, Matthew Clay, John Clopton, Howell Cobb, Samuel W. Dana, John Dawson, Joseph Desha, Daniel M. Durell, James Elliot, Meshack Franklin, Barent Gardenier, James M. Garnett, Peterson Goodwyn, Edwin Gray, John Harris, William Hoge, David Holmes, Benjamin Howard, Richard M. Johnson, Walter Jones, James Kelly, Thomas Kenan, Philip B. Key, William Kirkpatrick, Joseph Lewis, junior, Edward Lloyd, John Love, Matthew Lyon, Nathaniel Macon, Robert Marion, William McCreery, Daniel Montgomery, jun., John Montgomery, Nicholas R. Moore, Thomas Moore, John Morrow, Roger Nelson, Thomas Newton, Wilson C. Nicholas, John Porter, Josiah Quincy, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, John Rowan, John Russell, Lemuel Sawyer, Dennis Smelt, John Smilie, Samuel Smith, John Smith, Henry Southard, Richard Stanford, Abram Trigg, George M. Troup, Nicholas Van Dyke, Archibald Van Horne, Killian K. Van Rensselaer, Jesse Wharton, David R. Williams, Alexander Wilson and James Witherell.

Nays—Willis Alston, jr., Ezekiel Bacon, David Bard, Joseph Barker, John Blake, jun., Robert Brown, Joseph Calhoun, Peter Carlton, Epaphroditus Champion, John Chandler, Orchard Cook, Jacob Crowninshield, John Culpepper, Richard Cutts, John Davenport, jun., Josiah Deane, William Ely, John W. Eppes, William Findley, James Fisk, Francis Gardner, Isaiah L. Green, John Heister, William Helms, James Holland, Reuben Humphreys, Daniel Ilsley, Robert Jenkins, Nehemiah Knight, John Lambert, Josiah Masters, William Milnor, Jeremiah Morrow, Jonathan O. Mosely, Gurdon S. Mumford, Timothy Pitkin, jun., John Pugh, Matthias Richards, Samuel Riker, Ebenezer Seaver, James Sloan, Jedediah K. Smith, Clement Storer, Lewis B. Sturges, Peter Swart, Samuel Taggart, Benjamin Tallmadge, David Thomas, John Thompson, Jabez Upham, James I. Van Allen, Philip Van Cortlandt, Robert Whitehill, Isaac Wilbour, and Marmaduke Williams.

The third resolution being under consideration as follows:

Resolved, That provision ought to be made by law, for procuring a formidable train of field artillery, for the service of the United States:

Was agreed to without a division.

On motion of Mr. Randolph, the first resolution was referred to a select committee, which consists of Messrs. Randolph, Elliot, Cobb, Macon, and Kelly; and the second to a select committee, which consists of Messrs. Randolph, Ely, Tallmadge, Lloyd, Stanford, Mumford, and Smilie.

On motion of Mr. Blount, the third was referred to the committee to whom was referred so much of the Message of the President of the United States as relates to our Military and Naval Establishments.

Mr. Randolph said, that on this day a decision on a point of order had taken place, and been confirmed by the House. Upon looking back to the Journals of a former Congress he had found a precedent, where a previous question had been taken, not only on an amendment, but on an amendment to an amendment. His object in rising at this time was not to question the correctness of the decision of the Chair, much less the motives which induced that decision; but it appeared to him that if this precedent had been produced to the House previous to the confirmation of the decision of the Speaker, their vote would have been different. For this reason, and to obviate difficulties which daily occurred, he should move, that the Clerk of the House be directed to make a compilation from the Journals, for the use of the

House, of all decisions on points of order, which had taken place since the Government went into operation. Mr. R. introduced a resolution to that effect, which he wished to lie on the table.

The House then adjourned till Monday.

MONDAY, December 7.

Mr. BOYLE, from the Committee on the Public Lands, presented a bill supplemental to an act, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States;" which was read twice and committed to a Committee of the Whole on Wednesday next.

The SPEAKER laid before the House sundry other papers and documents relative to the contested election of John Culpepper, one of the members returned to serve in the House, for the State of North Carolina; which were received, and, on motion of Mr. DAVID R. WILLIAMS, referred to the Committee of Elections.

Mr. GEORGE WASHINGTON CAMPBELL, from the Committee of Ways and Means, to whom was referred a resolution of the House of the ninth ultimo, reported a bill to provide for the payment of certain expenses incurred in the impeachment of Samuel Chase; which was read twice, and committed to a Committee of the Whole on Friday next.

On motion of Mr. DAVID R. WILLIAMS,

Ordered, That the Message from the President of the United States, of the 3rd of February, 1806, together with a letter from the Governor of South Carolina, and an act of the Legislature of the said State, ceding to the United States various forts and fortifications, and sites for the erection of forts in that State, be referred to the Committee of the whole House to whom was committed the bill supplementary to an act, entitled "An act for fortifying the ports and harbors of the United States, and for building gunboats;" also, a bill sent from the Senate, entitled "An act to appropriate money for the construction of an additional number of gunboats."

Mr. EPPES presented a memorial of the first and second Chambers of the City Council of Washington, stating certain inconveniences, to which the Corporation and a number of the inhabitants of the said city have been and are now subjected, relating to the taxes on vacant or unimproved city lots, or parts of lots; to the introduction of an undue proportion of idle and vicious free blacks, people of color, and vagrants; and to the manner of electing members of the City Council, as established by the act of incorporation; and praying relief in the premises by an extension of the powers granted, by law, to the City Council; also, that the capital of the United States, possessing the best harbor on the Potomac river, may be made a port of entry and delivery.

Ordered, That so much thereof as relates to a port of entry and delivery be referred to the Committee of Commerce and Manufactures.

Ordered, That all other parts of the said memorial be referred to the select committee, appointed, on the twentieth ultimo, on a memorial of the citizens of the first and second wards of the city of Washington.

Mr. LLOYD presented memorials of sundry citizens of Montgomery county, in the State of Maryland, whose names are thereunto subscribed, in opposition to the prayer of petitions from sundry qualified electors of the said county of Montgomery, and of a part of Frederick county, presented on the fourth ultimo, "that the election of Philip Barton Key may be vacated and annulled," and stating that Mr. Key was a resident of the county of Montgomery aforesaid, before, at, and after, the election held in the month of October, one thousand eight hundred and six, for Representatives in Congress for the said State.—Referred to the Committee of Elections.

Mr. FINDLEY, from the Committee of Elections, to whom were referred the certificates and other credentials of the members returned to serve in this House, made a farther report, in part, thereupon; which was read and laid on the table.

EXTENSION OF PATENT RIGHTS.

Mr. CROWNINSHIELD, from the committee to whom was referred the petition of Oliver Evans, of Philadelphia, in the State of Pennsylvania, reported:

Oliver Evans, the petitioner, has invented a very useful improvement in the art of manufacturing flour and meal, for which he received a patent under the act of Congress, passed the 10th of April, 1790, entitled "An act to promote the progress of useful arts." This patent was granted the 18th of December of the same year, and expired in 1804. It was drawn up in the usual form of patents issued under that act.

The petitioner states, that many persons, without his license, and contrary to the true intent and meaning of the said act, having constructed and used his improvement, he was induced to appeal to the laws of his country for redress, and accordingly, in April, 1804, did bring an action against one of the invaders of his rights, in the circuit court of the United States for the Pennsylvania district, where "the court expressed their unanimous opinion that the description of the machines, stated in the patent to have been invented by him, was imperfect and insufficient; and that, by reason thereof, the said patent, or so much as came in controversy on the trial, was void." This decision was made at their October term of the present year, and, the sum in dispute not amounting to two thousand dollars, he is precluded from entering an appeal to the Supreme Court of the United States.

Thus circumstanced, the petitioner has applied to Congress for relief, and he prays that the Secretary of State may be authorized to grant a good patent, or that such other assistance may be afforded to him, as the utility of his improvement merits, and the public good shall require.

Understanding that the patent was merely deficient in point of form, the committee applied to the Secretary of State for his opinion on the subject. The Secretary's letter, subjoined to this report, will show that he does not think himself justified in introducing a principle which would admit the invalidity of all the patents issued in the same form since the commencement of the Government, on the decision of the circuit court alone. The alteration in the form of patents took place on the 28th of February, 1793.

No other material facts have come to the knowledge of the committee in this case.

The petitioner alleges that considerable sums of money are still due to him by those who continue to use his improvement without his permission, and which he is prevented from recovering by the decision of the court.

If the petitioner had not complied with the patent law; if he had not alleged, in his petition, that he had made a new and useful discovery; if his petition had not described his invention to the Secretary of State; or, if he had not truly and fully specified his discovery; if, indeed, in any respect, he had failed to perform what had been enjoined by our laws, the committee would consider his claim as an improper one; but viewing it in a different manner; considering, too, that the defect in his patent was caused by those appointed to issue it, from a misapprehension of the provisions of the law merely, the committee are of opinion that relief ought to be afforded to the petitioner, in some way or other; and no better mode suggesting itself than that of granting him a good patent for a limited time, they have been induced to ask leave to report a bill for that purpose.

Mr. Crowninshield then reported a bill for the relief of Oliver Evans; which was read twice, and committed to the Committee of the Whole last appointed.

MARYLAND CONTESTED ELECTION.

Mr. Findley, from the Committee on Elections, to whom was recommitted, on the nineteenth ult., the report on the memorial of Joshua Barney, complaining of an undue election and return of William McCreery, as a member of this House, submitted an amendatory report, in which they recapitulated, nearly in the same words, the facts set forth in the first report, as far as the clause terminating with these words, "no question was taken on the legal residence of William McCreery, in the city of Baltimore." The remainder of the report was left out, and the following inserted:

"When the report was recommitted, Joshua Barney alleged that William McCreery had declared himself not qualified to be elected, in terms that William McCreery refused to admit, and proposed to bring stronger proof against William McCreery's legal residence in the city of Baltimore. The parties went to that place to take testimony, which they have submitted to the committee; which is substantially as follows:

"Joseph H. Nicholson, in answer to interrogatories propounded by Mr. Barney, viz:

"*First.* Did any, and what, conversation pass between you and Mr. McCreery, as to his eligibility as a Representative to Congress, or between William McCreery, in your hearing, and what did he say?

Second. Did William McCreery at any time, and when, to you, or in your presence and hearing, acknowledge or say that he had not a residence in the city of Baltimore, and did not consider himself eligible as a Representative to Congress? &c.

"To the first, Mr. Nicholson answers, that, in the autumn of 1806, about six or eight days before the election for members of Congress, and he, Mr. Nicholson, hearing that doubts were entertained whether Mr. McCreery would consent to be a candidate, and inquiring on that point, induced a conversation relative to the election. Mr. McCreery said he had very reluctantly consented to serve, if elected, and regretted that some other person had not been fixed on, as he had understood that some objections were made to him on account of his residence in the country, and was apprehensive that this would induce many persons not to vote for him, whose support he would otherwise have had. On being asked by this deponent whether, at this period, his residence was not the same as at the antecedent election, and expressing some surprise that the circumstance of his residence now, more than then, should be an objection, as it had been overlooked before, Mr. McCreery, among other things, replied, that he had always taken care to hold a legal residence in the city of Baltimore, and went on to state how he had done so.

"In answer to the second interrogatory, Mr. Nicholson saith, that William McCreery did not at any time say to him, or in his hearing acknowledge, that he had not a residence in Baltimore city, or consider himself as not eligible.

"Edward Johnston, in answer to the same interrogatories, answers substantially as Mr. Nicholson had done, with this difference, that the conversation took place previous to Mr. McCreery's election to a former Congress; and further, Mr. Johnston says, it took place when himself, Mr. McElderry, and Mr. Dickson waited upon Mr. McCreery for the purpose of prevailing on him to become a candidate when Gen. Smith accepted a seat in the Senate; when he appeared anxious to decline, and observed to them, that, as he intended to remove to the country with his family, he was apprehensive that he would not be considered as a suitable Representative, and informed them, at the same time, that he intended to keep a counting-house for transacting business, furnished with a bed and other conveniences for his accommodation. This deponent and others assured Mr. McCreery that his contemplated residence would be no objection, and urged and prevailed on him to become a candidate; and that no other conversation ever passed between Mr. McCreery and himself, or in his hearing, on that subject.

"Samuel Walker testifies that, in 1803, William McCreery having contemplated residing a considerable part of his time in the country, and intending to rent his dwelling-house, he, the deponent, agreed to accommodate Mr. McCreery at his dwelling-house; and that Mr. McCreery's family has resided twice a year, since that period, either at the house of the deponent, or at the house of Hugh Neilson; and that the deponent still does reserve a chamber for his use.

"Being cross-examined, he cannot say at what time, or how long, Mr. McCreery and family resided in his house, &c. They resided as friends.

"Hugh Neilson testifies that Mr. McCreery, with his wife and niece, made his house their place of residence when they came to Baltimore, where Mrs. McCreery and niece frequently stayed two or three months before, and during the session of Congress; that Mr. McCreery frequently visited during that time, and Mrs. McCreery and niece commonly went to Washington in December or January; that Mr. McCreery made his house his residence when he came to Baltimore on business, but kept a bed, desk, &c., at the store occupied by James C. Neilson; and that the deponent is brother-in-law to Mr. McCreery.

"Alexander Nisbet testifies, that during the election, and some days before and after it, Mr. McCreery boarded at Mrs. Dysart's boarding-house, and slept there one night, and the other nights in the counting-room.

"James C. Neilson testifies that Mr. McCreery rented the store to him, but reserved to himself the right of putting up a bed in the counting-room, and of keeping a desk in it; that he put up a bed and slept in it about a week preceding the election, and two or three days after it; and that Mr. McCreery's desk, and a few other things, remained in it the whole time; but that, when Mr. McCreery left Baltimore, the deponent took down the bedstead, and put it in a room in that part of the house which was rented to Mrs. Dysart, and the mattress under the desk; that no other person slept there but Mr. McCreery; that he knows of no permanent residence Mr. McCreery had in Baltimore city.

"On the foregoing testimony the committee make no observation, but will lay the record of the testimony on the Speaker's table, and submit the following resolution:

"*Resolved*, That William McCreery, having the greatest number of votes, and being duly qualified, agreeably to the Constitution of the United States, is entitled to his seat in this House."

The report was referred to a Committee of the Whole on Thursday next.

REPRESENTATIVES' HALL.

Mr. BIBB said, it must have been long since perceived, by every gentleman in the House, that the splendid hall in which they were assembled was perfectly unfit for the purposes of legislation, and that it was impossible in its present state, either to hear or be heard; they were consequently under the necessity of voting on questions which they could not understand, much less the reasons offered for or against them; and the speeches reported by the stenographers must necessarily be, as they really were, very incorrect. These considerations induced him to offer the following resolution; which was agreed to, and Messrs. BIBB, N. R. MOORE, STEDMAN, MILNOR, and ROWAN, named a committee:

Resolved, That a committee be appointed to inquire whether the Representatives' Hall can be rendered suitable for the purposes of speaking and hearing.

FORTIFICATIONS AND GUNBOATS.

On motion of Mr. BLOUNT, the House resolved itself into a Committee of the Whole on the bill reported by the Committee of Aggressions on the subject of fortifications, and the bill from the Senate making an appropriation for the more effectual defence of the ports and harbors of the United States.

The bill from the Senate coming first under consideration, and the first section being read,

Mr. BLOUNT said it would be in his opinion very improper to make an appropriation to cover at once the expense of building, fitting out and manning; they should first appropriate as much as might be expended in building and equipping. To accomplish his object in this respect, and also an object which had been suggested by the Secretary of the Navy, that it might not be advantageous to confine the Executive to obtaining gunboats only by building them, he moved to insert after the word "build," the words "or purchased, armed, and equipped;" and to strike out after the word "boats" the words "and to equip, arm, man, fit out, and employ the same."

Both of these amendments were agreed to without a division.

The second section being under consideration,

Mr. BLOUNT said, the sum mentioned in this section being the precise sum reported by the Committee of Aggressions, he should not propose any amendment of this section; and he hoped the Committee of the Whole would agree to the bill as amended.

The question being on reporting the bill as amended—

Mr. MILNOR said it was not his wish to have acted on this bill at the present time; he wished the House to have had the whole system of defence before them, that they might have been enabled to judge of all its parts. From anything he had yet seen in the reports of the committees on the subject of defence, made to this House, and in the bill from the Senate, he was apprehensive that our modes of defence would not be as efficient as was necessary, or that they were of a nature to be made so. The object undoubtedly was to defend the ports and harbors from aggression and insult. The bill reported by the Committee of Aggressions had proposed to appropriate money for repairing such old fortifications and erecting such new ones, as, with the aid of gunboats, would afford sufficient protection to our ports and harbors. From this provision in the bill, it appeared that the committee had thought these were all the modes of defence it was necessary to keep in view for that object. He had formed a different opinion; he believed that no number of gunboats or fortifications alone would be sufficient for the contemplated purpose. He would acknowledge, that if a number of armed ships were to come in and make an attack on our ports or cities, fortifications might be of essential service, and gunboats in aid of fortifications. But was this all they meant to do? Would they do nothing more than protect themselves from actual attacks on their cities? If they were to recur to the first report of the Committee of Aggressions, they would find that the insults and indignities offered to our national character had not consisted in attacks made on our cities, but in attacks from ships of foreign nations committed in our rivers, in taking seamen from our vessels, in capturing our vessels and sending them to their own ports for adjudication; in one instance, a national ship of the United States had been attacked in the most outrageous manner, and part of her crew taken from her. To protect the nation from insults of this kind, he believed no force of gunboats or land batteries would be sufficient. If gentlemen meant to effect what they professed, the protection of the national honor, they should adopt other modes of defence. They ought to have some ships of war.

Here a Message was announced from the President of the United States, by Mr. COLES, his Secretary, and handed to the Chair.

It being suggested by Mr. NEWTON that the Message very probably contained information which might bear on the subject now before them,

the Committee immediately rose, reported progress, and obtained leave to sit again.

The Speaker declared the Message which had been received to be of a confidential nature; the galleries were accordingly cleared, and the House remained in session, with closed doors, from half past twelve o'clock till a quarter past five, when they adjourned.

Tuesday, December 8.

The Speaker laid before the House a letter and report from the Secretary of War, accompanied with an account of the state of the fortifications of the respective ports and harbors of the United States, with a statement of the moneys appropriated for fortifications, and remaining unexpended; also, an estimate of the sums necessary for completing such fortifications as may be deemed requisite for their defence; prepared in pursuance of a resolution of this House, of the first instant; which were read, and ordered to lie on the table.

Mr. McCreery presented a representation and petition of Amos Stoddard and others, in behalf of themselves and of all the officers and soldiers composing the present Army of the United States, stating the losses and grievances to which a number of the officers stationed at posts on the Western frontiers of the United States, have been, and are now subjected, in consequence of the enhanced prices of the necessaries of life, and other causes therein enumerated, and praying that such addition may be made to the pay and other emoluments now allowed, by law, to the officers and soldiers of the Army, as to the wisdom of Congress shall be deemed reasonable and proper.—Referred to the Committee of the Whole House to whom was referred a report of a select committee appointed, on the twenty-ninth of October last on so much of the Message from the President of the United States as relates to the Military and Naval Establishments.

Mr. Milnor said, it would be recollected by the House, that the Committee on Military and Naval Establishments had made a report which had been made the order of the day for yesterday; as it had not been taken up, and as he thought it proper that it should be before the same Committee of the Whole who had other modes of defence under consideration, he moved that the Committee of the Whole, to whom it had been referred, be discharged from its further consideration, and that it be referred to the same committee to whom was referred the bill from the Senate, and the bill reported by the Committee of Aggressions, on the subject of defence.

Mr. Blount thought the bills for the erection of gunboats and fortifications should be distinct from any other mode of defence; as considerable progress might be made in building them before the other modes could be completely discussed. The whole system of defence could not be gone through in both Houses in less than two or three weeks; which in that case would produce a long delay in attending to what it was necessary immediately to commence. If the gentleman's object was not to clog the projected measures for defence, he must perceive that there were strong reasons against the adoption of his motion.

The motion was negatived—yeas 25.

NON-IMPORTATION ACT.

Mr. Newton said, the House would recollect that on Monday next the law prohibiting the importation of certain articles would go into operation; and it was also known that that law was extremely defective. In order to prevent a variety of suits and perplexities which would arise under it, and in consequence of a letter directed from the Treasury Department to the Committee of Commerce and Manufactures and submitted to them, exposing some of its defects, he moved a resolution directing the Committee of Commerce and Manufactures to inquire into what amendments were necessary to be made, with power to report by bill. It was not the wish of the Committee to suspend or repeal the law; it was their wish, and the wish of the Treasury Department, that it should not be clogged so as to produce law suits. It was a sound principle of all Governments, to prevent litigation; and if it was made to appear that any law which had passed gave rise to it, it ought to be amended. The letter stated a variety of cases which arose under that law. To remedy these defects, was the object of the present motion.

The motion was agreed to; and, before the House adjourned, a bill was introduced for the purpose; which was read, and committed to a Committee of the Whole on Thursday next.

MERCHANT VESSELS.

Mr. Dana submitted the following resolution:

Resolved, That it is expedient to provide for regulating the conduct of such merchant vessels as, by agreement of the respective owners, may sail in concert, for mutual asistance and defence, in any lawful commerce; and, also, for settling, according to the course of proceeding in Courts of Admiralty, the respective rates of contribution to be made between them, on account of any loss or damage which may be thereby incurred.

Mr. D. said the resolution contemplated a prospective measure, which might be beneficial to the country; and it might require much consideration. He wished it to be referred to a Committee of the whole House a week or a fortnight hence, when it might be freely discussed.

Mr. Crowninshield wished the gentleman from Connecticut would have been so good as to have stated the object he had in view in moving this resolution. It appeared to Mr. C. that it would be very improper at the present time to enter into a regulation of this kind. Should they at this time authorize merchant vessels to arm, or now refuse the right of searching merchant vessels? However that right had been violated, he did not feel prepared at this time totally to deny it. He had no objection to the resolution lying on the table; but, till a war actually commenced, he thought nothing should be done on this subject; he did not feel prepared at this moment to pass

this resolution. It was not, he observed, a proposition to authorize a committee to investigate the subject, but a direct proposition to the House to adopt an important measure. Notwithstanding the abuses of the right of search which had taken place, he did not think it proper for them at this juncture to refuse the right of searching merchant vessels, for contraband articles: for such he presumed was the object of the gentleman from Connecticut; the resolution appeared to him to bear that construction.

Mr. DANA said, that if the resolution was intended to have the effect supposed by the gentleman from Massachusetts at this time, he should also have deemed it improper. The resolution embraced two objects, to be provided for when at any time they should be expedient, but said nothing of the propriety of our merchant vessels being armed at this time. One object was, that when the Executive authority of the country gave consent to the arming of merchant vessels, they might sail in unison, so as to render their purpose of defence more effectual. The other object was, to remedy any difficulty which might occur, if merchants should disagree as to the rates of contribution to be paid by vessels; and it might be a question in the latter case whether relief could be had but by suits against the owners. In their system of general laws, they had one which regulated the distribution of prize money, and one for regulating salvage on captures. He wished something of this kind—a general law, in regard to the present subject under consideration. This was his real object. He had presented it to the House in the first instance, that the House, if they should be generally satisfied that the details were impracticable, might reject the resolution; if they did not, they would refer it to a committee to make the experiment.

Mr. CHANDLER could easily conceive that the time might come, perhaps it was not far distant, when the measures contemplated by this proposition might be necessary; but he could not precisely understand why it had not in the first instance been referred to a select committee, rather than a Committee of the Whole as was proposed.

Mr. DANA wished the subject to be discusssed in Committee of the Whole, that all difficulties might be at once presented and judged of. If they chose to send it to a select committee, it was proper first to give it a discussion.

Mr. SMILIE thought the course proposed by the mover of the resolution, was the most correct. In Committee of the whole House they might decide whether a law of this kind was necessary. Indeed he could see no objection to the adoption of the resolution; it merely went to discuss a subject which might be properly comprised in a standing law of the country.

The resolution was then referred to a Committee of the Whole, on Monday.

FORTIFICATIONS AND GUNBOATS.

On motion of Mr. BURWELL, the House went into a Committee of the Whole on the bill from the Senate for building gunboats, and the bill for fortifying our ports, as reported by the Committee of Aggressions.

The bill from the Senate being still under consideration,

Mr. MILNOR said, when he was on the floor yesterday, and interrupted by the Message from the President, it was his intention to have moved an amendment. The bill provided for building one hundred and eighty-eight gunboats; he moved to strike out the words "and eighty-eight," so as to reduce the number to one hundred. He thought an hundred gunboats in addition to those they already had, would be fully sufficient, if they also adopted other modes of defence. He had yesterday stated that he did not believe the building additional fortifications, and an additional number of gunboats, would effect the object which appeared to be contemplated by the committee. He confessed he did not place as much reliance in gunboats as some gentlemen did. While he thought they might be useful in aid of land batteries or frigates, it was also his opinion, that if gentlemen examined the statement respecting different aggressions by a certain Power, they would find that not one single act of aggression could have been prevented or punished by any batteries on land or gunboats in aid of them. They were not committed in the face of our batteries, or in that part of our ports and harbors where the gunboats could have acted with effect; they were committed within the mouths of our rivers, or just outside them. He thought the construction of a few frigates would be expedient, in addition to those now in our possession. They might act with gunboats; and might drive any foreign nation either to the necessity of bringing a large force on our coasts, and keeping it all together, by which the number of their aggresssions would be lessened, or expose their fleets to a force which would be able to avenge the insults offered to us. He was not of opinion that they ought to have a large navy, nor was he a friend to one; but he thought a few ships would be of essential service. He was of opinion that one ship of this country acting on our coasts, would give them a power of repulsion equal to the force of three or four ships of a foreign nation; and would compel the enemy at all times to be on their guard, and to keep their fleet together. His object was, as he had expressed it, to reduce the number of gunboats, because the number proposed would draw more money from the Treasury than was necessary for this purpose, and because he wished to retain a little money for other modes of defence.

Mr. BURWELL said, he should vote against the amendment proposed, and in favor of the number reported by the Committee of Aggressions, as contained in the bill from the Senate now under discussion. It appeared to Mr. B. that the gentleman from Pennsylvania had taken a very incorrect view of the subject. That gentleman has objected to this law because it did not make provision for ships of war to serve as a defence to our commerce, and because he supposed the committee had taken up this mode of defence to the

exclusion of any other. Mr. B. said, it must be obvious to every gentleman that it was almost impossible to have crowded into one bill all the measures of defence which might become necessary; thus it contained no provision for arming the militia, for raising a standing army, building or repairing frigates, &c. The only question now was, on building a number of gunboats, for defence against the attack of a foreign nation. He thought a sufficient number should at once be authorized: for if the number were insufficient to answer the intended purpose, the money expended in their purchase would be so much thrown away; so much expended from which the public would derive no benefit. The opinions of those men best acquainted with the force which might be necessary, which had been communicated to the Committee of Aggressions, has stated this as the competent number.

With respect to the expense of building gunboats, it would be found that the cost of building a frigate would be much greater than a number of gunboats equal to the number of guns carried by a frigate. The Secretary of the Navy had estimated the annual expense of gunboats at $11,000. Mr. B. admitted that the sum appeared enormous, and it remained for the consideration of the House whether they would expend so large a sum for that purpose. The estimate of the Secretary of the Navy went upon the ground that during the whole of the year, forty men would be required to man each of these boats. Mr. B. thought that regulations might be adopted, that would render eight or ten men sufficient to be regularly employed on board these boats; a sufficient force fully to man and use them upon occasion might be organized from the different ports or seaport towns; and it would be found, by recurring to the President's Message, that the same idea had been entertained by the Executive. And he believed, that although the Secretary of the Navy had estimated $11,000 as the sum necessary for the annual expense, he had done it on the supposition that forty men would be employed during the whole year in each gunboat. At times when Europe and the United States were at peace, it would not be necessary that more than a small portion of those boats should be afloat; they might be kept in ordinary, relying on the seamen of the port for any sudden emergency.

With respect to the propriety of building gunboats, he would observe that they were not a mere experiment; they were sanctioned by the practice of Europe, and were very beneficial for the defence of ports against sudden attack. The French, Spanish, Dutch, and other nations, in the vicinage of the British Navy, had combined their boats with land batteries, for the purpose of defence against the assaults of that formidable Navy. These boats were also a part of a system heretofore practised in other countries, and proposed to be further pursued here.

It was at this time peculiarly important to make preparations. Whether they adverted to the preparations in the British provinces adjacent to this country, to the armament said to be preparing in England for a foreign expedition, or the principles which she had avowed in regard to neutral trade,—in any case they should be prepared for the attack she might think fit at any time to make upon the country.

If any gentleman in the House could suggest a mode of defence more efficient than that now proposed, no member in the House would be more willing to adopt it than himself. He felt no particular predilection for this mode. He should vote for the number of gunboats to be erected as it now stood, on the ground that it was not more than sufficient; and that if a less number than sufficient was erected, the money expended would be thrown away. He should, for this reason, vote against the amendment and in favor of the bill.

Mr. MILNOR observed, the gentleman last up had said that he should be opposed to the striking out, because he thought the present number was absolutely necessary, and that a smaller number would be insufficient. Had Mr. M. thought this, he would not have moved the amendment; but it was well known to many gentlemen of the Committee that a number of our ports and harbors were so situated that gunboats could not act in them efficiently. Wherever the water was deep, wherever it was rough, these vessels were perfectly useless, and nowhere could be used to effect but in smooth and shallow water. If they were to construct a few large ships of large force, capable of acting in those ports where gunboats would be inefficient, it would give greater satisfaction to the neighborhood of those ports than gunboats, which could be of no use to them. In the Southern ports he believed gunboats would be effective; but Northward and Eastward they would be of no effect. In the port of New York they would not be an efficient force to go below the city and act in the bay; and in progressing eastward from New York, they would be found less and less efficient.

The gentleman from Virginia had admitted that, according to the statement made by the Secretary of the Navy, the expense was enormous, but he also felt disposed to believe that the statement was erroneous, and that so much would not be necessary. Past experience, Mr. M. said, had shown that estimates had generally fallen short of the object which they were intended to cover, and less than was estimated for this purpose need not be calculated upon. He was not opposed to the construction of a sufficient number of gunboats, but he was opposed to wasting the public treasure on constructing a greater number than would be useful; this was his motive. He had examined the statement of the Secretary of the Navy, and found that he had stated the number of gunboats which, in his opinion, would be necessary for each port and harbor in the United States. There were a number of places in which the number estimated would be wholly useless and unnecessary. For instance: the port of Alexandria. Of what avail would two or even four gunboats be for the defence of that port, were any hostile force to ascend the Potomac? These

gunboats were contemplated to be scattered along the coast in small numbers; in all these cases they would be totally useless. They were only efficient when gathered together in a large number; they should not only be sufficient in number to front an opposing force, but to surround it.

Mr. M. was as anxious as the gentleman from Virginia could possibly be, that they should make such preparation for defence as the emergency of the times should call for. It was because he believed that gunboats without frigates were not sufficient, but with them might be extremely useful; and because that if the House should direct the erection of the frigates, the number of gunboats might be lessened, that he had made the motion under consideration.

Mr. CROWNINSHIELD said that there was some inconsistency in the observations of the gentleman from Pennsylvania; he had said gunboats would be useful with the aid of large vessels, and at the same time said they were entirely useless in the mouths of rivers or deep waters. [Mr. MILNOR explained that he had meant they would be useless when acting alone.] Mr. C. said he had formed a very different opinion, indeed, from that expressed by the gentleman from Pennsylvania with respect to gunboats. It was well known that no longer ago than the year before last, this Government had employed eight or ten gunboats to assist in the attack on Tripoli; they all crossed the Atlantic in safety, except one boat. Although they did not come into the attack on Tripoli, because a peace was prematurely concluded, yet he himself had heard the late Commodore Preble say that, without them the squadron would not have been competent to have made an effectual assault on the city. These boats then kept the sea in very tempestuous weather, a fact which the despatches from the commanding officer had announced. He believed that they could not at this time adopt a better mode of defence than that proposed by the bill. He should be sorry to see the proposed number reduced, because he believed they would render important services, if at any time our ports or harbors should be attacked. These gunboats were not boats that would sink the moment they got into rough water; they were boats of 60 or 70 tons burden, which might navigate the globe with safety. He spoke from experimental knowledge. The gentlemen surely did not mean to say they could not swim. In Mr. C.'s opinion, there could be no better system of defence in aid of fortifications than that proposed by the bill.

In regard to the expense, the sum necessary for gunboats, after striking out the number 88, would not be equal to the expense of one single frigate. He should not now discuss the subject of Naval Establishments, for it was not before the House; when it did come into consideration, he should take the liberty of saying something about it.

Mr. C. said he thought he had understood the gentleman to have said, that if they had been in possession of these gunboats at the time of the aggression, they would not have rendered any service to the country. Mr. C. differed from the gentleman totally; he thought if they had a few gunboats in the neighborhood of Norfolk, they would no longer see British armed vessels riding there with impunity; he conceived that gunboats could drive them out of our waters. He hoped the number would not be reduced; if the number were to be altered, it should be increased. If the gentleman had any proposition to make for building a large or small Navy, he could bring it forward any time hereafter.

Mr. BLOUNT presumed the gentleman would admit, as a certainty, that it was the duty of the House to provide effectual protection. The select committee having determined, in their own mind, that the best system of defence would be composed by fortifications and gunboats, had inquired what number would be of use. The answer to this inquiry was already before the House; it was stated that the United States had already 69 gunboats—that 257 were the whole number which might be usefully employed; consequently that 188 were wanting. If it were the object of gentlemen to afford a certain protection to the country, he hoped they would not hesitate to pass this bill. If the gentleman from Pennsylvania should be able, when the subject was properly before them, to prove to Mr. B. that frigates or ships of war would add to the protection which might be afforded by fortifications and gunboats, he would vote with him for their construction. It would be time to discuss this when the subject was before them. He hoped the idea of the utility of a naval force would not induce gentlemen to withhold from the Executive that force which they had signified as necessary for the protection of our ports and harbors. If any doubt were entertained by gentlemen who were not members of the last Congress, there was a report, which he held in his hand, made at a former session, containing the opinions of naval officers on the expediency or utility of these boats. The report was lengthy, and he should not call for the reading of it, except gentlemen wished it. There was, however, no necessity to demonstrate their utility, as no gentleman had attempted to show that they were not eminently and essentially useful as one species of defence.

Mr. MILNOR said, although he had a respect for the opinion of the gentleman from Massachusetts on the general topic of navigation, he must confess that in this respect he differed with him. Although he had not been engaged in naval affairs, yet living near navigable waters, and being somewhat acquainted with the capacities of vessels, he must retain his opinion, notwithstanding the assertion of the gentleman from Massachusetts. That gentleman had supposed, because our gunboats had crossed the sea, in doing which, by the by, one of them was lost, that they were fit for sea service.

Mr. M. said, although these boats would live, they could not act in deep waters. When the water was rough, one of our gunboats, rigged as they now were, could not act; she would toss to and fro, and her gun would point in every direction, when a large vessel would lie steady in the wind.

The gentleman had said that if they had a large number of gunboats at Norfolk the British vessels would not have remained so long in its vicinity with impunity. Mr. M. was seriously of opinion that the British squadron would have laughed at the idea of being attacked by 50 or 100 gunboats. If such a number were to attack these ships, great part of the boats would be totally destroyed; they were not calculated to accomplish an object of this kind. If they were to attack a single frigate, in calm water, they might injure her; but take several ships together, or even one in rough water, and they might send any number of gunboats, and they would not effect their destruction, or drive them from their position. In making this assertion, the gentleman had presumed that the proposed boats were to be of the same kind as those which crossed the ocean; but Mr. M. had understood they were not of the same kind, and perhaps less effective.

The gentleman from North Carolina had said that this being the number which the Executive had asked for, it was therefore proper to grant it. Mr. M. said it was proper to adopt this number if they thought it necessary to answer the purpose of defence; but he believed that they were not to take all the ideas of the Executive for granted. If they were, however, they had nothing to do but pass such laws as they chose to ask for and then adjourn. It was the opinion of Mr. M. that it was proper to take into consideration all the modes of defence, and to have the several parts of the propcsed system before them, that they might act with efficiency.

The gentleman had said that if they would bring forward a proposition for erecting a Navy, he might vote for it. Mr. M. wished to save something for other modes of defence; if it were only the sum of four or five hundred thousand dollars, he would wish to save even that sum. Some hint had been given as to the cost of a frigate; it was not proper now to go into an inquiry on that; but he would observe, that the United States had now in hand timber for five or six 74-gun ships, well seasoned, and which would grow worse instead of better, from further keeping; they had also canvass, cannon, and other materials necessary to complete these ships; so that the cost would be considerably less than would be necessary if nothing was prepared for the purpose of building or equipping these frigates. He believed it would be pursuing a true economy to erect these vessels, because, if they should not be built, the timber would become useless and be completely lost to the United States. If, therefore, it were contemplated to build ships at all, this was the propitious moment to commence that purpose.

Mr. M. was not for delaying the defence of the nation; he wished it to have been commenced long ago; but since they had at length commenced it, he wished to have the whole system brought into view at once. They should have a well-digested plan before them; not one part to-day and one to-morrow, but the whole system at once, in which he wished to see included a few ships of war.

Mr. BLOUNT.—The gentleman last up has stated that I wished this mode of defence because it was the wish of the Executive. I stated expressly, and the gentleman must so have understood me, that the committee had selected this number of gunboats because they were informed that this number would be necessary. I referred to the document where this statement is expressed and where it may be found. I meant to express the opinion, that if we built a less number than necessary, it would be a waste of public money; and that protection would not be obtained by a less force than that which is proposed.

Mr. B. also said that the 88 gunboats would cost $440,000; that sum, when applied to the building of a large frigate would not complete her; and when built, she would carry but 44 guns, one-half the number of guns which would be carried by 88 gunboats; besides which, the expense of rigging and making her fit for service would be enormous. Thus, by building one frigate only at the same expense as would complete 88 gunboats, they lost 44 guns, besides the additional expense of fitting out and manning the frigate. He had, however, only risen at this time to explain that he had been misrepresented when it was stated that he had said he should vote for this number of gunboats because the Executive had recommended it.

Mr. CROWNINSHIELD said that he must answer the objection made by the gentleman from Pennsylvania, who had said that these boats could not live in rough water. Mr. C. said that gunboats could be used in rough water; that engagements had taken place between hostile fleets when the weather was so tempestuous that the lower tiers could not be used at all, or but partially; and certainly these boats could act with effect within the mouths of rivers, and even beyond them.

As he had said before, whether gunboats could or should be employed in the Chesapeake, was a point on which gentlemen might differ; but it was his opinion, that, with fifty gunboats, the fleet might be driven from the Chesapeake. There could be no ship, of whatever metal, but might be induced to cut her cable and retire at the approach of two gunboats. Her anchor would not enable her to place herself in such a situation as she might wish; and two gunboats placed under the bow of a ship, or in a protected situation, might oblige that ship to cut her cable and go off. It was clear also that gunboats could and did carry at least as heavy metal as ships-of-the-line.

These boats had been used to advantage by the European Powers. It was stated in the account of the late attack on Copenhagen, that the gunboats went out and attacked the gun brigs of the English fleet, and rendered very essential service. France had been for some years engaged in collecting three or four thousand gunboats for the invasion of England; and this was the plan of the first military character of the age. The English Government had dreaded more these three thousand gunboats, than they did all the combined fleets of Europe. These combined fleets, if now collected in one immense fleet, could possibly be destroyed by the navy of Great Britain at this

time; not so with regard to these boats; for, besides guns, they could transport an hundred thousand men. They all knew that the gunboats at Algeziras, near Gibraltar, had, in moderate weather, resisted the strength, and harassed the progress, of the British fleet whenever it was out. He believed that Algiers, too, depended more upon her forty gunboats, than upon her whole piratical squadron, for the defence of its city.

What was now proposed to the House? Not to employ these boats in the prosecution of an offensive war, for they were not at war; whatever might be said, they were yet in a state of peace. These were for defence; and for this purpose might render the most important services. What object would the gentleman obtain by striking out eighty-eight from the number of gunboats? He might deprive some ports of their defence; and with the money which these eighty-eight would cost, they might build a ship of forty-four guns, but could not send her to sea; this was a fact capable of demonstration. He hoped, therefore, the gentleman would not persist in the amendment he had offered. The sum of $400,000 would be a mere nothing towards obtaining even a small fleet; it would take five or six millions to bring such an one into service. If in favor of seventy-fours, or any other ships of war, this was not the way to get at his object, his proposition should be perfectly distinct from this. If he was in favor of a fleet, he ought also to be in favor of gunboats. Mr. C. would not, however, detain the Committee any longer; he hoped they would agree to this bill entire, and disencumbered by anything else than what it already contained. This, said he, is but a small part of a system of defence; but as far as it goes, let us complete it.

Mr. SMILIE said the question was, whether they would appropriate a certain sum of money for the defence of their ports and harbors. He had not heard it said, and he hoped it never would be said, that they ought to defend themselves beyond their own shores. He confessed that he was now called upon to give his vote on a question to the decision of which he was not competent; but it being his duty to decide, he should, on this as on other subjects with which he was not well acquainted, depend upon the opinions of those who were. He believed many gentlemen in the House were in the same situation with himself, not being acquainted with naval affairs. It was the duty of the Executive to communicate information in answer to any inquiries which it was necessary to make. They had performed that duty, and the answers were in favor of gunboats. Should he then pursue any opinion of his own in contradiction to this, when he had no evidence on which to ground that opinion? Certainly not; he should depend upon those who possessed better information on the subject than himself, except there was something so absurd in their opinions that he could not swallow it.

For his own part, Mr. S. conceived that building frigates was not the proper mode of defending our ports and harbors; and he could not see, if they were to build frigates, why an enemy's frigates, drawing the same depth of water, and being so much more numerous than ours could be, could not come into our rivers and capture them; whilst gunboats could retire into shallow water from the pursuit of so superior a force. He hoped they should never go beyond their coasts to contend with the nation with which they were now at variance, so as to have occasion for large ships of war. Gunboats lying in our waters would render services, and, if pressed by a superior force, could retreat.

He hoped the sea was not the theatre on which they meant to defend themselves. He would venture to prophesy, were that to be the scene of contest, that all their ships would soon swell the navy of the enemy; and he did believe that the system of defence proposed was at least as suitable to answer its intended purpose as any other.

Mr. CHANDLER said, when they had information from actual examination, that the contemplated number of gunboats would be necessary, he did believe that the proposed sum should be appropriated to that object. The gentleman from Pennsylvania, who had moved this amendment, professed himself as willing to protect our ports and harbors as any gentleman, but wished to strike out part of the number of gunboats, in order to adopt another mode of defence. Admitting that a frigate could be built for the sum which would complete eighty-eight gunboats; could he demonstrate that the force of forty-four guns would be equal to eighty-eight of heavier metal? Another thing he would mention; when the gunboats were constructed, a part of them might be removed, and they could increase or diminish the force at any particular place, as occasion might require; if they had one frigate in place of them, they could not divide her strength, and it could be retained at one point only.

Mr. NEWTON said it was not his intention to take up the time of the Committee in a disquisition on the subject of gunboats; though, were he to attempt it, he had no doubt but he might be equally qualified with some gentlemen who had displayed their eloquence on this occasion. He thought they should now take into consideration the situation of the country in relation to Great Britain. Why were they now talking of defence, of fortifications, and of gunboats? Because they had arrived at a perilous crisis; the nation had been attacked; the blood of its citizens had been spilled; and they must have war, if reparation were not made. They heard by the papers that a Minister was to be sent to negotiate on this subject; but when that Minister arrived here, would any gentleman say that they would receive that reparation which he was prepared to offer? He believed not. When our affairs were thus situated, and as the gentleman from North Carolina (Mr. MACON) said a few days ago, when they were actually in a state of war, ought they not to make a better use of their time and the public money, than in debating on the details of a bill? If a treaty with Great Britain were laid upon their table at this moment, should they for that reason desist from preparations for defence? No;

that nation had trampled on every moral principle; there was no faith in her; paper and parchment were no security for her good conduct. If they wished to be respected by that Power, they must place themselves in a situation to return injury for injury; to retaliate on her for the violations of their rights. When they did this, they might expect something like decency of conduct, or respect for their rights from that Power; until they put themselves in a situation to command her respect, they would in vain expect to receive it.

The gentleman from Pennsylvania who had made the motion for striking out the number eighty-eight, had assigned his reasons for it, and his principal reason was, that it was necessary to apply the money which would thus be saved to the building of ships of war. Mr. N. would agree with that gentleman to build ships of war, but did not wish to involve it with other objects; he did not wish to make this bill a hotch-potch; he wished to let each species of defence stand on its own ground. Were the House to adopt a law authorizing the erection of frigates, it would take years to complete them; if, however, they authorized the erection of gunboats, they could be built in the course of six or twelve months, and would afford immediate protection to all our ports, which was the object they now wished to accomplish. He knew a number of gentlemen who were formerly greatly opposed to this mode of defence; but no sooner was the outrage on the Chesapeake committed, than they embraced the opinion in favor of their utility, and were convinced that the country could not adopt a better mode. What were these gunboats contemplated by the bill? They were vessels that could carry heavy metal, thirty-two pounders; they were indeed moveable fortifications. If a vessel were to pass a fortification, and a number of gunboats were to pursue her, they would ultimately force that vessel to surrender. Suppose there were an enemy's fleet upon our coast, and they were to understand that we had a number of gunboats prepared for their reception, would they come within our waters? No. The reason was evident: they knew that our gunboats would make riddles of their vessels; because, in those situations, gunboats could act where large vessels could not turn round to defend themselves. Mr. N. had understood, from naval officers of very great skill, that if a number of well constructed gunboats were to be placed under their command, they would risk their reputation on preventing an enemy's squadron from entering our waters; and he doubted not, from the known character of the naval officer at Norfolk, as well as other officers in our service, but that they would prove the efficacy of that means of defence, whenever an opportunity offered.

When our naval force was employed at Tripoli, where the gentleman who was now no more so conspicuously distinguished himself, did he place entire reliance on his ships of war? No. Did he not procure gunboats, and with their assistance did he not make considerable impression upon that Power? He did so; and it was confessed by the Power itself on which the attack was made.

There was one object which should certainly be considered by the House; it was this: that if they did go to war with Great Britain, they could not carry on an intercourse from one part of the United States to the other by sea; because, the enemy being in undoubted possession of the ocean, our vessels could not venture out. This communication must be carried on by inland navigation; and if any gentleman would examine the map of the United States, he would find that a canal which would connect the waters of North Carolina with those of Chesapeake Bay, was almost completed, as well as other canals, which would suffice for the transportation of the produce of one part of the country to the other. Now if they did not keep the Chesapeake clear of privateers, they would totally deprive the people of even this mode of conveyance. This was certainly an object of considerable importance.

Mr. N. concluded by saying, that, convinced as he was that the mode of defence by gunboats would be of great benefit to the people on the sea-coast, and might prevent their houses from being battered about their ears, he should be decidedly opposed to the amendment proposed by the gentleman from Pennsylvania.

Mr. Gardenier said that although he was not one of those who entertained a great passion for gunboats, yet he could see certain situations in which they would be useful in aid of fortifications; but they should be restricted to a certain number. The mode of fortification which was proposed, was by gunboats and batteries; and the proportionate expenditure for these two objects, how much for one, and how much for the other, was a subject which would engage the attention of the House when it came properly before them. He should feel no objection to vote for the whole number of gunboats, were he certain at the same time that enough would be appropriated for land-batteries and other objects.

Mr. G. thought the first thing to be considered, was the end to be accomplished, and afterwards, the means to accomplish that end. Instead of this, he had perceived a disposition in certain gentlemen to inquire first what were our means, and to determine from their extent what might be done. The country from which he came, notwithstanding the favorite theory of gunboats, would be better satisfied with permanent substantial fortifications; other places might be better defended by gunboats, and he had no objection that they should be allotted to those places.

It seemed that a certain sum had been set apart for gunboats, and a certain sum for fortifications; the two making a sum total for defence and protection against foreign Powers. If a certain circumscribed sum only were to be appropriated; if the Treasury could spare but a limited sum, and part of that sum was to be appropriated to each part of the system; he should be in favor of reducing the number of gunboats, that more money might be applied to fortifications. On the whole, however, he thought they might go into a Committee of the Whole on the other bill, for fortifications; and they could then determine whether

both objects could be fully accomplished. If both could be accomplished, having no objection to a sufficient number of gunboats, he should be satisfied; if not, he should wish to take from gunboats and add to the fortifications. Under these impressions he should vote against the amendment at present.

The motion for striking out the words, "and eighty-eight," was then negatived—ayes 21.

The bill from the Senate being gone through, the Committee took up for consideration the bill supplementary to an act for erecting fortifications and building gunboats, reported by the Committee of Aggressions. The first section being read,

Mr. BLOUNT said, that in order to give power to the President to authorize the erection of works other than such as might be denominated fortifications, in case the assent of the Legislature of the State of New York should be given for that purpose, it was necessary to make an alteration in the bill. He moved to amend it by striking out the word "others," and inserting the words, "other works."

Mr. QUINCY would merely ask the chairman of the Committee of Aggressions to explain what species of works was intended to be embraced by this amendment.

Mr. BLOUNT said the works contemplated were the placing obstructions in the channel of the river. It was understood by the committee that the people of New York very generally agreed that it might be necessary, for the more effectual protection of the city, that certain obstructions should be placed in their waters, such as sinking blocks in the river. The committee also understood that the President of the United States would not, without the consent of the Legislature of New York, agree to place any obstructions in their waters. The amendment proposed was intended to give him the power to do it, if the Legislature should think fit to give their consent; and when it was necessary to fill the blank in the bill, Mr. B. said he should add to the sum reported on a former occasion as much as would be sufficient to meet that object.

Mr. MASTERS said, if the amendment of the gentleman from North Carolina (Mr. BLOUNT) had for its object to authorize the President to dam up the Hudson river by sinking blocks, he trusted the good sense of the Committee would reject such a preposterous proposition. The injurious consequences of such an experimental measure to the city of New York, and the State at large, would be beyond calculation. It would, in all human probability, inundate, in high freshes, a considerable part of the town; and in low water, in the summer season, so prevent the influx of water as to cause the tide to recede more than thirty miles, and ruin a number of most flourishing towns one hundred and seventy miles up the river. The effects would be ruinous to one of the finest rivers in the world. It was a well known fact that sinking the piers of Westminster bridge, in the river Thames, caused the tide to recede in that river upwards of seven miles; take the same data for calculation, and the tide in Hudson river would recede more than fifty miles. This, said Mr. M., is a visionary scheme to evade the real object of defence, and to introduce false notions of economy. Whenever we attempt to make appropriations for permanent forts and batteries, expense and economy are brought forward as an objection. The objects of necessary defence, and a prudent, well regulated economy, can be easily reconciled; but your plausible and popular sound of economy, which is always the sweeping argument when this and similar measures are under consideration, is like a fine net, which is intended to catch every thing, both great and small. It may serve for a fine fancy to fill up a speech with, but will not answer for fortifications. It will endanger the nation by keeping us defenceless and weak, tempt aggressions, and invite the destruction of our seaport towns. Where, then, will be your economy?

It will be more for the advantage of New York not to have any appropriation; even to have the city laid under contribution, rather than have their harbor destroyed. The disadvantages by natural obstruction, by sand bars, in many rivers and harbors both in Europe and America, are so obvious to the most common capacity, as to be conclusive against making artificial ones. What is called a good harbor? Is it not depth of water to admit the free passage of a ship of any size, with good anchoring ground, and land locked? New York has every natural advantage, which it is our duty to protect and not destroy. How often have the citizens of New York humbled themselves by petitions, and how often have they drooped and hung their heads with disappointment! Shall we now tell them that the General Government has concluded to defend them by making a dam across the channel? For God's sake, let us lay aside these doctrines and chimerical schemes, and adopt some rational system, and persevere in it. It is of the most essential concern to that city; it is a measure of the highest importance to the nation. Some gentlemen say, New York cannot be fortified, from its situation. I have been informed by those who are venerated for their age, men venerated for their talents, and military skill, men almost adored and venerated for their military and political services, that New York is capable of being defended against the attack of the most powerful force, by forts and batteries, aided by block ships and ships of war. Tell us then, candidly and plainly, will you protect and defend us, or will you not?

Mr. BLOUNT said, that the gentleman from New York had worked himself into a considerable ferment on this occasion. If he had attended to what had been said just now, he would have understood that the President of the United States had determined to place no obstruction whatever in their waters, except the assent of the Legislature of New York should be previously given. It was thought proper that an appropriation should be made to meet this purpose if that assent should be given. The gentleman certainly knew that an opinion was prevalent in New York, that by placing obstructions which would not tend to destroy the navigation of the river, a better pro-

tection would be afforded than by any fortifications whatever; and that millions, tens of millions he might say, would not be sufficient for completing fortifications on land which would afford as effectual protection as that mode. He could assure that gentleman that he had now before him three different estimates of the expense of placing these obstructions in three different places in that river; as well as soundings which had been taken for that purpose by Captain Chauncey, of the United States Navy. The gentleman might also rest assured, that if the Legislature of New York should choose to authorize this measure it would not totally block up the channel, as he had supposed.

Mr. Quincy said he would only ask the gentleman from North Carolinia, as to his precise meaning in inserting the word "works." This word was, perhaps, in common life, confined to constructions other than fortifications; he believed however it might include fortifications also. When he had asked the question as to the species of works contemplated to be erected, he had no conception that it was possible, under an expression of this kind, to comprehend the sinking of blocks to choke up the harbor of New York; for he had thought the erection of works was putting up, whilst sinking blocks was putting down. He had, however, a different object in rising. He had understood it to be the intention of this bill not only to authorize the repair of old fortifications, but the erection of new ones; and the bill as it stood antecedent to the gentleman's amendment, might have been competent to that end. Now, as the gentleman had amended it, it would imply works different from fortifications as he understood. If indeed it were the real object of the gentleman to repair old fortifications only, and not to erect new ones, the bill would now answer his purpose fully. If it were otherwise, he conceived the language was not correct.

Mr. Blount said, he felt very little solicitude as to the fate of his motion. His intention was to give a greater latitude to the discretion of the President. He would not, however, undertake to dispute with the gentleman from Massachusetts on the precise meaning of words; for he had not spent his early life within the walls of a college, as that gentleman had, but in the field, fighting for the liberties of his country. Under the belief that the word *works* did include fortifications, he had made his motion for amendment. It was the intention of the committee both to erect new works and to repair old ones. If the gentlemen from New York and Massachusetts were determined to restrain the President from giving that protection to the port of New York which the people of that State should think proper, he was content. He did not wish to waste the time of the House unnecessarily, especially on a subject which required so much expedition.

Mr. Cook said, he lived in a port in which there was sufficient depth of water for any British man of war, and he thought he should feel as indignant at any proposition for destroying the harbor as the gentleman from New York. He hoped the feelings of other gentlemen in the House would be in unison with his. If they were arrived at such a point of degradation, that, in case of attack, they must retreat to or beyond the mountains, and if instead of defending they must abandon the coast to its fate, they had better adopt this measure, and block up their ports altogether. After such a proposition as this, he should not be surprised at any one which could be made; it appeared to him that the spirit of our forefathers was departing the country. He was alarmed when he heard such a proposition as this, and he hoped there would be sufficient magnanimity in the House to give the amendment a decided negative.

Mr. Chandler said this proposition had its origin in a memorial from the mayor, aldermen and citizens of the city of New York; and that those works were not contemplated to be erected, except with the consent of the Legislature of the State.

Mr. Blount said the gentleman from Massachusetts had pretended to understand the proposition to have for its object the stopping up the harbor of New York; he said pretended, because it would be but a poor compliment to the gentleman's understanding to suppose that he really thought such a proposition would ever be made on this floor. The water at the mouth of the river Hudson was ninety feet in depth; it was contemplated to sink piers in the river, and to extend immense chains from pier to pier, which were to be connected by locks, so that they could be at times unlocked. This could not be a new project to the gentleman who appeared so much alarmed at it. He had a plan now before him, which he did not obtain from the President of the United States, in which a course was delineated for a chain of blocks, and which would not obstruct the tide, so as to produce shoals in the North river. There seemed to be many different opinions on the subject among the citizens of New York; in consequence of which the President had determined not to attempt any measure of this kind without the consent of the Legislature of New York, who it was expected would discuss the subject at an early day.

Mr. Thomas said, that he thought it very proper to make this amendment, so as to embrace the plan of sinking blocks in the harbors of New York. He considered that the Executive, or the Secretary of War, had acted correctly in recommending to the chairman of the committee to have this latitude given in the specification of the objects of this appropriation. It was a truth, Mr. T. said, that the corporation of the city of New York had recommended that mode of defence, and the persons composing that body ought certainly to be supposed to be more competent judges of the best mode of defending that city, or at least they were better able to judge whether this mode of shallowing the channel, so as not to admit large ships of war to approach the city, would materially injure the commerce of that place, than any other class of citizens; they were certainly more immediately interested than any

other. And since the corporation of that city had adopted the plan of sinking blocks in the channel, as part of the system of defence, and submitted that proposition to the President, it was undoubtedly proper in the House to allow that object to be embraced in the appropriation.

Mr. T. could not see that any alarm ought to be excited by this. The Secretary of War, he understood, had written to the Governor of that State on the subject. The determination would be submitted to the Legislature. If they withheld their assent, by refusing to make the cession, the thing was at an end, but, at this stage of the business, he conceived it was the duty of that House to give such a latitude to the objects of the appropriation, as to embrace that mode of defence, if it should be ultimately adopted. Mr. T. said it was a mode of which he did not know that he should himself approve; but he confessed he was not a competent judge, and therefore wished the subject to be so left that it could be adopted or not by the President and constituted authorities of the State of New York, as the consent of both would be necessary before it could be carried into effect.

The gentleman from Massachusetts (Mr. QUINCY) appeared to ridicule the idea of choking up the harbor of New York, as he had called it; but, he would repeat to that gentleman, the corporation of that very city had recommended this plan of defence. A corporation, too, a majority of whom, at least, coincided with him (Mr. Q.) in political sentiment.

Mr. UPHAM observed, that although he was not disposed to quibble on words, he really thought by the amendment proposed to the bill, the idea of erecting new fortifications was totally excluded. He wished the language of the bill should be so expressed as to give the President power to erect new as well as to repair old fortifications.

Mr. BLOUNT modified his amendment so as to read "other fortifications and works."

Mr. SLOAN said he rose to give the Committee a little information on this subject, particularly the gentlemen from New York and Massachusetts, who were so much alarmed on this occasion. Mr. S. then stated that during the Revolutionary war, at the time the British army made an attack on Philadelphia, piers were sunk in the channel of the Delaware, in a direction suited to the position of the fort, and chains extended from one to the other. This fortified the port above completely, insomuch that it detained the British vessels of war from proceeding further. He barely mentioned this historical fact to take off from the surprise which had been manifested by some gentlemen at this proposition.

The amendment was then agreed to—ayes 86.

Mr. BLOUNT moved to fill the blank for the sum to be appropriated for fortifications with "one million." His reason for naming this sum was, that there remained in the Treasury, unexpended of former appropriations, about $123,000; $750,000 were sufficient to complete the fortification of those places which were susceptible of defence by means of fortifications; and it was believed, and he was authorized to say, that the sum of $200,000 would be sufficient to erect the works in the harbor of New York, in case of the assent of the Legislature.

The sum of $1,500,000 was then named.

Mr. MASTERS said that fortifications were one part of our defence, and gunboats were another. The select committee had reported both these modes in one bill, as intimately connected together. The sum for each object should be proportionate, according to the extent of their utility. The 188 gunboats which the bill provided for would cost $940,000, and to keep them, with those already built, in actual service for one year, would cost the nation the additional sum of three millions of dollars. The sum of fifteen hundred thousand dollars, which he had moved for fortifications, bore no proportion to the other appropriation, according to the importance of the object. It was to be remembered that this sum was to be applied to more than thirty different places. He wished, therefore, the bill for building gunboats might not be hurried out of their hands until he could have time to prepare an amendment to reduce the number of gunboats and provide for building some ships of war, unless the House would agree to raise the sum intended for fortifications, to enable the President to erect a formidable fort on Flag Staff Hill, and a battery on the shoal opposite, at the Narrows, to prevent enemy's ships sailing into the harbor of New York. He had been informed by Captain Williams, who was a very skilful engineer, that a fort could be erected at the Narrows, which would discharge 180 heavy cannon in a minute. The fortifications on Governor's island and the contemplated works at the Battery and on Bedlow's island, were only intended to prevent ships of war lying against and firing upon the town. No man in his senses would contend that these works, with fifty gunboats to be assigned for New York, were a sufficient defence for that important city. Those gentlemen whose favorite system of defence was gunboats, he trusted would not object to a liberal appropriation for his system. He understood the honorable gentleman from Pennsylvania (Mr. SMILIE) to say that he objected to any defence by frigates, because, where one frigate was another could come, and because gunboats could run out of the way. This argument amounts to this, (said Mr. M.,) that frigates will have to fight, and gunboats to run out of the way to avoid fighting; and for that very reason he should prefer frigates, which would make a great addition to our national strength.

It had been stated, if they have fortifications, they could not prevent an enemy from landing. The consideration for the House was, what places were most vulnerable to attack, and upon such places to erect fortifications. If an enemy could land near a city or town, it proved that forts and batteries were absolutely necessary for the defence of such cities and towns. He discarded half-way measures; if a narrow, selfish policy prevailed, the nation would feel the fatal effects of it. If the nation desponded, it would not be for the want of

men or small arms; it would be from their measures, and he feared their gunboat plans would paralyze the whole system of national defence.

Mr. Fisk said, the gentleman last up had told them the sum was too small; the chairman of the Committee of Aggressions had made the inquiry of the proper officer, whose duty it was to make up the estimates, and the result of that inquiry was reported to the House. That officer had told them what sum was necessary, and the House would not take the gentleman's declaration that there would be a deficiency; for he produced nothing but assertion in support of his declaration. Were the Committee, because a large sum made a respectable appearance, to appropriate more than was necessary to answer the purpose? He thought not; they had sufficient occasion for their money. The gentleman did not appear to recollect that Congress had, year after year, been granting money, millions, he might say, for fortifications. If this had occurred to the gentleman, it might have lessened the inequality which he thought to exist. He was of opinion with the gentleman that they should make such appropriation as might be efficient; and although it had been said that the contemplated appropriation was a mere nothing, Mr. P. said that it was not evidence to his mind that it was not enough.

Mr. Quincy wished the report of the Secretary of War to be referred to, in order to show the incorrectness of the gentleman from Vermont, who had stated that, in some years past, there had been millions appropriated for fortifications. Mr. Q. said, if his memory did not fail him, in —— years there had been appropriated for that purpose only $540,000.

Mr. Gardenier wished to have given his sentiments on this subject, but as he was at this time unwell, he hoped the Committee would rise, to give an opportunity for further discussion.

After some conversation on this motion, the Committee rose—yeas 66, nays 43, and the Chairman reported progress in the gunboat and fortification bills.

On a wish being expressed now to consider the bill, which passed through the Committee of the Whole, for building gunboats, it appeared that no agreement to the bill had been reported; when, on motion that the House immediately resolve itself into a Committee of the Whole on the bill, there were—yeas 55, nays 55. The Speaker decided in the affirmative.

The House being again in Committee, Mr. Burwell moved that the Committee now rise and report their agreement to the bill for building gunboats, and report progress on the bill for fortifications. A conversation of some length took place on the motion, when it was agreed to—yeas 65, nays 44.

The Committee accordingly rose, and reported an agreement to that bill.

Wednesday, December 9.

Another member, to wit: Edward St. Loe Livermore, from Massachusetts, appeared, produced his credentials, was qualified, and took his seat in the House.

Mr. Boyle, from the Committee on the Public Lands, presented a bill making farther provision for the disposal of the sections of land heretofore reserved for the future disposition of Congress; which was read twice, and committed to a Committee of the Whole on Monday next.

Mr. Dawson, from the committee appointed on so much of the Message of the President of the United States as relates to the Military and Naval Establishments, presented to the House a letter addressed to him, as chairman of the said committee, from the Secretary of War, enclosing an estimate of the annual expense of an army of thirty-two thousand eight hundred men; also, an estimate of the expense of the Hospital, Quartermaster, and Ordnance Departments, for the first year.—Read and referred to the Committee of the Whole to whom was committed, on the second instant, a report from the committee last mentioned.

FORTIFICATIONS AND GUNBOATS.

The House proceeded to consider the amendments reported yesterday by the Committee of the Whole to the bill, sent from the Senate, entitled "An act to appropriate money for the construction of an additional number of gunboats."

Mr. Durell said, as there appeared to be a considerable diversity of opinion on this gunboat business, and as a number of gentlemen from the North did not readily fall into the scheme of the Southern gentlemen, and as he was from the North, he would state some reasons why this bill should not pass. He thought, as every gentleman appeared to think, that this was a crisis which called for union and great exertion; the great object was, to arm the nation to meet an event which they would be called to meet ere long. The question was now on one species of this arming, on which there were different opinions. He could have wished that the whole subject of defence could have been before the House at the same time, and that it could have been so considered. It appeared to be conceded, on all hands, that fortifications were necessary, and gunboats might be useful to a certain extent; but something more than gunboats were necessary, to wit: ships of war of some magnitude. This doctrine might be considered heresy in that body, for aught he knew, but he felt it his duty to express his opinion on the subject.

It appeared that, in addition to fortifications, the precise number of one hundred and eighty-eight gunboats was called for. A question had been asked, why that number was exactly calculated as being necessary; the chairman of the committee, who reported the bill, states that this number was thought necessary by the Executive department. It was not to the system of gunboats that he had an objection, for he believed that, to a certain extent, they might be useful; but he did not believe that gunboats, in connexion with fortifications, would attain the end for which they were acknowledged to be proposed. In casting

his eye over the documents before him, he perceived that gunboats were assigned to certain situations in the North, where he was confident they could never be of use. He was positive of this fact. Four gunboats were assigned to the port of Portsmouth, New Hampshire. He would appeal to gentlemen in the House, acquainted with the situation of that port, whether they seriously believed that four gunboats, or that twenty, would be of any service there? It was impossible that they should; the situation of the port, the strength and rapidity of the tide were such that they could not be used. The same observation would apply to a number of ports east of that; it was generally conceded that gunboats were not calculated for deep and turbulent waters; the Northern shores were not sand banks, and gentlemen seemed to think these were necessary to allow gunboats to defend even themselves.

He saw that for the ports of Norfolk and New York, there were assigned a large number of gunboats. He was inclined to believe that a number of frigates, to the amount of the expense of these gunboats, would be more consonant with the wishes of the people in the mouth of the Hudson, than so many gunboats.

It had been stated, in the course of debate on this subject, that these boats were a cheap defence, and easily attainable. Mr. D. said, he had taken the trouble to make a comparative calculation of their expense; it was not, to be sure, from official documents before him, but it was sufficient to convince him that they were at least equally expensive with ships of heavier metal. The House had before them a statement, in which the cost of gunboats was precisely stated, and it would be found that the expense of building and supporting at sea sixteen gunboats for one year would amount to more than $280,000. He found, by recurring to documents in his hand, the expense of British ships of war estimated at £1,000 sterling per gun. Taking that calculation for the expenditure here, he found that a forty-gun ship would amount to $249,000, and rather more, which was less than building and supporting at sea for one year sixteen gunboats. He would appeal to any gentleman, who had experience in naval affairs, (if any such were within the walls of the House,) whether a forty-four gun ship, notwithstanding it belonged to the Navy, and that his Navy, such as it was, had been denounced as a disgrace to the country—whether a forty-four gun-ship would not be of more effect and better calculated to protect that city, and its trade, than sixteen gunboats?

One hundred and twenty-eight gunboats to Norfolk and New York! The expense of sixty-four, one half of this number, would be fully equal to the expense of four forty-four gun frigates; and he was of opinion that these, at one half the expense, would be considered by the gentleman from Norfolk and New York, and by the House, as better calculated than gunboats to defend those ports. Mr. D. could see no reason why they should not have their choice in this respect. He, therefore, concluded with moving to strike out "one hundred and eighty-eight gunboats," and insert "one hundred and twenty-four gunboats and four forty-four gun frigates."

Mr. BLOUNT called for a division of the question, wishing the first question taken on striking out.

Mr. B. said, however necessary such a measure as that proposed should be thought by the House, it was not necessary to interweave it in this bill. If this bill were passed to-day, contracts might be entered into to-morrow, and the building of the boats immediately commenced. It was not to be expected that a proposal to add to our Naval Establishment, which had uniformly produced so much discussion, would pass through even this House in two weeks, which would be too long a delay of defensive operations. If the gentleman could convince him, when the subject was before the House, that an increase of the Navy was a necessary measure, he would vote for it with him; but the bill should not now be hampered by a proposition of this kind.

Mr. GARDNER felt very conscious of the importance of fortifying the various ports and harbors of the United States, and should give the bill his support on its passage; but he had been in hopes yesterday that the amendment proposed by the gentleman from Pennsylvania would have prevailed. He wished to see the system of gunboats put into operation, and to see the efficiency of that mode of defence properly tested. There appeared to be many different opinions on the subject; and he perceived the House would not be satisfied till the experiment was tried, and their utility known. He was willing that as many gunboats should be employed as was sufficient for defence in those waters where they might be useful; but he did not think they would be efficient in the Northern and Eastern ports of the United States. He should be obliged to gentlemen if they would strike out a part of this number of gunboats, and appropriate the sum applicable to them to another mode of defence. There appeared to be a large majority in favor of the bill, but if they would be so condescending as to fortify the Northern ports in a way most agreeable to the people interested in their defence, he should feel gratified at it. He was in favor of the amendment, though he would rather a larger number should be stricken out; and hoped the question on striking out would be carried, whether ships of war were inserted or not. It had been yesterday said, by a gentleman from Virginia, that if a less number were built than that proposed, they would be useless. This argument could have no weight with those who did not think they would afford defence at all; but, for his own part, he should vote for anything in the shape of defence, till it should be found insufficient by experiment.

Notwithstanding all that had been said on the subject of gunboats, he had not heard that they had ever been tried but by nations who possessed other naval force. He hoped the number would be stricken out, from a spirit of accommodation, and frigates substituted for the gunboats which

were assigned to the ports north and east of New York.

Mr. BLOUNT said, that the House could do nothing on this subject, were they inclined, while it was under the consideration of the Committee of the Whole. The Committee on our Military and Naval Establishments had reported a blank resolution for building ships of war, which was referred to a Committee of the Whole. If gentlemen wished to have the whole subject before them, he would suggest to them the mode of doing it; throw all the reports from your tables, demolish the committees who made them, and erect one great committee of defence. He thought himself that this should have been done in the first instance; but, as another method had been pursued, gentlemen would better promote the interest of their country, and their own views, by permitting this bill to pass, and they might then call up the report on the subject of a navy.

Mr. THOMAS had been of opinion that it was proper to reduce this number of gunboats, and that the number now proposed to be inserted was sufficient; but, since a majority seemed in favor of the original number, he should acquiesce in it. When the subject of fortifications and other objects of defence should be taken up, he had no doubt but a liberal disposition would be manifested by the House.

Mr. BACON observed, that some gentlemen had undertaken in themselves to represent the whole Northern part of the Union, and had expressed their wishes that the House would condescend to listen to the united prayers of the representatives from those States. He only rose to say, that he, for one, protested against being considered as joining in that request. He was of opinion that the mode embraced by the bill would better accord with the sentiments of the people of the Northern States, than that which those gentlemen had proposed. He had no intention of making any calculation on the subject, because he did not consider himself qualified to do it; but would barely observe that, were the question fairly tried in the Northern interest, those gentlemen would be found in the negative.

Mr. GARDNER said he did not pretend to represent a larger portion of the Northern country than fell to his lot; but, the reason why he urged the expediency of this amendment was, that he perceived that one mode of defence was brought forward to drain a large sum of money from the Treasury, which might exclude others; he also conceived that there was a propriety in uniting gunboats and frigates together. This mode had been brought forward by the chairman of the Committee of Aggressions, and was to be crammed down their throats, whether they would or not. Why should not the Northern States have a chance for their mode of defence, as well as the Southern States? He was willing those States should have them, but wished other States also to have their wish. They had been told that this mode was recommended by the heads of departments; he was only sorry that it was not recommended by higher authority.

Mr. CROWNINSHIELD said, he considered the present proposition as much the same with that which was yesterday offered in Committee of the Whole, and to which the Committee was decidedly opposed. He trusted the decision of the House to-day would be the same as that of the Committee yesterday. He thought his friend from New Hampshire was extremely mistaken in his calculations of the comparative expense of gunboats and frigates of forty-four guns. It would be seen by the report of the Secretary of the Navy, that the estimates for gunboats would amount to about $5,000; and he thought it would not go beyond it. Taking this for granted, the gentleman's calculations of expense must fall to the ground. Mr. C. then stated the expense of frigates which had been built, from which it appeared that the expense of building one frigate was fully as much as that of sixty-four gunboats. If they proposed to strike out this number of gunboats in order to build frigates, they must add a sum of one million of dollars to the appropriation.

Mr. C. was sorry this question had been presented to the House at this time and in this form; if gentleman wished ships to be erected, they could bring forward their propositions hereafter, and obtain their object. He was sorry to see this system embarrassed by any other; he thought it was unconnected with any other system, whether fortifications, navy, or whatever might be proposed. He thought it was very probable, if the United States were involved in a war, that they must increase their Naval Establishment. In saying this, he did not mean that they should wade into an ocean of expense: but he thought a few frigates would be necessary to protect prizes, and to convoy merchant vessels. It was well known that the British navy, large as it was, could not protect her whole commerce, many of her merchant ships sailed without convoy; they sailed armed, however; and such ought to be the case, in this country, if unfortunately it should be afflicted with war. We are not now at war, said Mr. C.; we have received a blow and claimed reparation, the decision on which is not yet made; when war does ensue, it will be time to arm our merchant vessels. It was nevertheless proper now to make preparation for defence. It was well known that although the Secretary of the Navy had estimated a certain number for each port, these gunboats could be removed from one part of the country to another when occasion required; and the port of Newport, or any other northern port which had not a due proportion, at a proper time could receive aid from New York. He could not conceive that the estimate being made up in this manner precluded a different arrangement.

One word with respect to the utility of these boats, in addition to what he had before said on the subject. The gentleman seemed to think that a forty-four gun frigate would be of more use than sixty-four gunboats. Did not the gentleman know that gunboats carried thirty-two pounders, while a forty-four gun frigate could only carry eighteen's; there was a vast difference between the power of eighteen and thirty-two pounders. Gun-

boats placed in convenient situations in our harbors might be extremely useful; and he must assert, that a dozen or fifteen gunboats could drive a fleet out of our harbors. Gentlemen in the country who were entitled to great credit, had decided in favor of their utility; it had indeed been fashionable to abuse gunboats, but that was no reason they should now be objected to. If gentlemen wished frigates, let them come forward fairly with a proposition at any other time than this moment and he would meet it fairly. The boats should be built now, as a preparation for events; perhaps war could not be avoided, perhaps it could. Let us, however, said he, put our ports in a state of defence that we may be prepared for all possible events.

Mr. SAWYER said, it was not his intention to trouble the House often with his observations; for, being but a young member, he sat there more for the purpose of acquiring information than of giving it; nor should he have risen at this time, had not his duty compelled him to reply to some remarks, and to oppose the amendment offered by the gentleman from New Hampshire (Mr. DURELL.) The gentleman wished the United States to have a fleet; to have four forty-four gun frigates to assist in the defence of New York. For his own part, Mr. S. wished the United States were in such a situation as to enable them to usher into existence a fleet capable of annihilating at one blow the whole naval power of England, which had so long proved a scourge to all nations, and to this nation in particular. Such a consummation was devoutly to be wished; but the attainment of such an object by the United States, was utterly impossible: they had not means wherewith to do it, and an attempt which should fall short of the end, would do the nation more injury than good, by tending to swell the already overgrown naval power of Great Britain. At present, he must say, he was entirely opposed to a Naval Establishment, and differed entirely with the gentleman from Massachusetts, upon the propriety of any such establishment in the present situation of affairs; he wished to have nothing to do with any establishment unconnected with a system of land defence. There was a time when a Naval Establishment might have been consistent with national policy; when a naval armament, such as could then have been constructed, might have been instrumental, by proper management, in maintaining the balance of naval power in Europe; that time was, when the combined fleets of France, Spain, and Holland, were nearly a match for the British naval force; but that time was now elapsed; that opportunity, which might have been so advantageously seized, was, through an unfortunate prejudice in favor of one nation and against another, suffered to escape unheeded. They now saw the effects of that policy; the fleets of France, Spain, and Holland, were swept from the ocean; the British navy retained the undisputed possession of every sea, and it would be an extravagant undertaking in the United States to attempt the creation of a naval force calculated to make a serious impression upon Great Britain; they would become the mere shipwrights of Great Britain, who would be ready to receive their ships as fast as they could be launched. Could they erect a navy equal to that which Denmark had possessed? Could they build and equip twenty-four sail-of-the line at once? If they could do this, experience had fatally shown, that so far from aiding in the defence of the nation, this force would soon be turned against it; England, with a superior force, would soon convert them into a means of offence against this nation. But it would not be in the power of the United States, encumbered as they were by a great national debt, and cramped in their resources by interruptions of their trade, to provide a navy as respectable as that of Denmark was; and surely any smaller force could not be contemplated. Let us then, said he, apply our limited means to a mode of defence on which more reliance may be placed; let us in the first place put our ports and harbors in such a state of defence as will, in a great degree, prevent our feeling the want of a navy. To effect this object, he said, they must have recourse to gunboats. He did not conceive this means of defence to be so trivial as the gentleman from New Hampshire (Mr. DURELL) seemed to think them; not that they could be relied on as an efficient system of defence by themselves; not that they were to expel the British squadron from our shores (though it was thought they could effect that object;) but because, in conjunction with land batteries and fortifications, they would insure some safety of person and property in our seaport towns. By judicious management, by disposition in shoal waters, so as to aid the batteries on shore, they might be the means of preventing our cities from being plundered and burned, and our banks and stores from being rifled of their wealth. In this point of view, he considered them as part of a land defence, totally unconnected with a navy; they were not to go into deep water; the ocean was not their element; they were to remain in stations from which they might afford the greatest assistance to our forts and batteries, and when hard pressed or overpowered by force they could take shelter under them. This, said Mr. S., is the great advantage they have over heavy ships, there being no danger of their capture while we can maintain possession of our forts. He did not calculate upon their always escaping unhurt; he trusted they would not be too much given to running; they would no doubt be sometimes hit, and he trusted their brave seamen would sometimes expect to suffer and would not shrink from the danger. He trusted they had at present many mariners ready to emulate the glorious example of those brave fellows who devoted themselves for their country at Tripoli; but what would stimulate their courage and inspire them with confidence, was, that these boats presented but a small mark to their adversary, while he at the same time, owing to his superior bulk, would scarcely ever be missed, and one of their six and thirty pounders would make no small impression upon a large ship; the wound would be dangerous, and if, as he was told would be the case, they fired red hot shot, very often mortal. These boats, in co-operation

with forts, would secure the shores at least from the depredations of a few frigates. Without them, they might soon expect to see their cities wrapped in flames, their banks plundered, and individuals despoiled of millions: but with this powerful aid to fortifications, disposed in the manner directed in the bill, to effect an object of this kind would require a force from England which it would be very inconvenient if not impossible for her to spare. He had this morning received a piece of news which very much lessened the necessity of acceding to the gentleman's motion for the construction of four additional frigates for the defence of New York: he was told from good authority that the commandant of the gunboats stationed at that place confidently declared, that with fifty of those boats, in conjunction with the forts, he would be able to repel any force that could be sent against him—and Mr. S. said he had no reason to doubt the correctness of his calculation. Nearly all the effective impression which the arms of the United States made upon Tripoli was by gunboats, and that was the first experiment of the kind they ever made; and it might be supposed that great improvement in their construction and management had been since made. Besides, they were then put to an use for which they were not originally intended; they were meant to be employed as defensive weapons, not offensive. The next experiment was tried at Algeziras, and the last at Boulogne. From their efficacy there, as auxiliaries to the batteries, was to be ascribed the salvation of the French squadron and the escape of the town from plunder and conflagation.

The British have not dared to attack a single French port since, though they had full possession of the channel and every means of attack which their unopposed naval superiority could afford. Though they saw preparing in those ports materials for their destruction, though they saw rising up in them means of offence so much dreaded as to require the utmost vigor of national exertion to provide against them, still did they stand aloof. Had Copenhagen been defended by gunboats distributed so as to act with the batteries, she would not have fallen so easy a prey; in fact, the few gunboats they had, did all the execution that was done to the British shipping; for the fleet which remained in the port for its defence had no retreat from the superior force of the enemy, but where they could be pursued by vessels of equal size, while the gunboats ran under the forts and continued to annoy the British ships until those forts were taken by land. And if all the vessels which were captured had been gunboats, how much better would it have been for the Danes; how much less heavy would the loss of a few boats have been than that of so many large ships, so long building and accumulating, and at such an immense expense! But in order to show the inutility of gunboats, as well as fortifications, this House was told the British could succeed against our towns by landing a sufficient number of men below our forts and attacking them by land. This is exactly, Mr. S. said, what he wished to hear; for it was conceding at once that our gunboat and fortification defence would be too much for them to pass, that they would be compelled to give up the idea of carrying the place by water, and thus lose all the great advantages which their boasted irresistible naval power could afford them. If it proved anything else, it was an argument that equally applied against making any preparations for defence at all; for, as they could not pretend to put their whole line of seacoast in a state of defence, an enemy might always find some place at which to land, and it might as well be said that one place ought not to be put in a state of defence, because a landing might be effected at another. Mr. S. hoped they should be prepared to meet them at every vulnerable point; he hoped their care would be extended to all our large commercial cities, in such a manner as would, with the aid of their patriotic citizens and the militia, protect them from the predatory incursions of the enemy, for it was that species of warfare on which the enemy seemed mostly to rely. To her disgrace, be it spoken, that the chief hostility at present carried on by Britain was by buccaneering, robbery, and plunder; they watched opportunities to trespass upon the property of individuals by surprise, and insidiously carried off everything they could lay their hands upon. The British, he said, find their sources of wealth obstructed from being driven with their trash from the continent of Europe; and in order to support their expensive establishments, and the appearance of a nation they made up the deficiencies by such crimes against neutrals as in individuals would send them to the gallows; they became highwaymen by sea and land; they were guilty of violations not only of the laws of nations, but of the municipal laws of almost every State, through every grade of criminality, from piracy even down to petty larceny; we are, therefore, to provide against them, not as an honorable, open enemy, but as a gang of robbers. If they went on and adopted the defensive measures recommended in the bill reported by the Committee of Aggressions, as well as this bill, they would be sufficiently prepared for their reception, without going to the expense of building more frigates. Should they attempt anything more serious against us, said he, I trust we shall be prepared to meet them on equal grounds, and that we shall not be outdone by the Spaniards in Buenos Ayres, or even by the Turks at Constantinople. Of this kind of assault, said he, we have little to dread; they have sufficient employment for their men without sending them abroad to fight. It is their despicable, free-booty mode of warfare against which we have the greatest occasion to provide: that they may not, with a few ships and men, seize upon New York for instance, and carry off the accumulated millions of her banks and merchants; and such provision is already amply contemplated in the two items of the bill reported by my colleague.

Mr. S. said, that in all their measures of a defensive nature, there was one thing the House ought most strictly to attend to, and that was economy, which the exigency of the times requires that they should practise; their plighted

faith for the redemption of the national debt required that they should practise it. No system of defence could be devised for the country, in his opinion, so efficient and so economical as that embraced by the bill as it now stood. Calculate the expense of building forty-four gunboats and a forty-four gun ship, and they would find very little difference; yet how great would be their relative difference in point of utility in case of attack. The frigate would soon add one more ship to the number of the enemy; but the gunboats would subtract a few from him, or at least disable them, so that they would be obliged to sheer off to refit. The cost of a forty-four gun frigate in this country fell little short of $257,000, that of forty-four gunboats at $6,200 each, amounted to $272,800. The frigate could not act against an enemy without wind, but the gunboats, by the use of their oars, might, in calm weather, when a hostile fleet could not form in order of battle, row up as near as they desired and give them point blank shot. Calculating every other shot only to take effect, and two shot to be fired every minute, a ship would receive sixty of our thirty-six pound balls in an hour, which, in his opinion, would pretty well do her business, particularly if any of them were red hot. But it might be asked, what is the hostile ship to do in all this time? Mr. S. said she might bring such guns to bear upon the boats as her situation would permit, and which, in order to reach her must be thirty-six pounders, a weight that no forty-four gun frigate carried, unless a few on her quarter deck; and while lying insensible to her helm, she would have to take aim at a little boat, with its bow towards her, a mere wedge not four feet above water. In such a situation one or two boats on each side of her would, he thought, be an overmatch for any frigate: if they were not, they could still retreat to a place of safety. Our channels were so narrow that if a whole fleet were to attempt to enter our waters, but one or two ships could pass abreast, particularly if the wind were ahead; and each ship of that fleet would have to expose itself in rotation to the point blank shot of our gunboats and batteries. If they escape both, then I confess, said he, we have no way of effectually defending ourselves by water, and I leave the enemy to be received on shore at the point of the bayonet by our brave militia, who I trust their old masters will find somewhat improved in their favorite art, since the few lessons they gave them last war.

Mr. BLOUNT said, that having the honor to be a member of the committee to whom had been committed by the House the subject of aggressions, he would ask the indulgence of the House to repel an aggression on that committee, especially as he meant to do it by means which would not interrupt the tranquillity of the House. A gentleman from New Hampshire had said or insinuated that that committee, regardless of their duty, had shown a particular partiality to the mode of defence by gunboats. It would be a sufficient answer to this imputation to read the resolutions constituting that committee and the committee on our Military and Naval Establishments. [Mr. B. read these resolutions.] He would ask the gentleman whether he could have expected from the Committee of Aggressions, a report proposing an augmentation of our naval force? The committee had an equal regard to the protection of all the States. As to the Southern States, Mr. B. said, particularly the State which he had the honor to represent, they required no protection beyond their proportion. Far from having such selfish views as seemed to be entertained by some gentlemen, they relied more on their own strength and spirit for protection, than on fortifications by the United States. A great deal had been said by gentlemen on the inefficiency of these boats. Mr. B. regretted that it was not known by the President of the United States, when he was last session called upon for information on their utility, that there were other gentlemen in the United States than those whose opinions he had transmitted, who had such accurate knowledge on this subject. The committee, however, had believed that the evidence in their favor was conclusive; Mr. B., therefore, called for the reading of the Message of the President of the United States, of the 10th February, 1807, with the accompanying papers.

The Message and papers were read.

Mr. COOK said, he could have wished that the different modes of defence should have been united, and decided upon together; but from the disposition of gentlemen who were in favor of the gunboat system, the House appeared to be compelled now to decide on this alone. It was well known that he was not averse to the proposition for constructing a number of gunboats; that he had last session given his vote in favor of them, and was now in favor of increasing the number, believing that in some situations they might be eminently useful; but when he found that so large a sum had been appropriated, almost to the exclusion of any other mode of defence, he deemed it his duty to give his vote in favor of a proposition tending more equally to apportion the modes of defence.

It had been moved to strike out of the bill a certain number of gunboats, and insert a certain number of ships of war. That a navy was necessary for the protection of our commerce was the opinion of President Washington, expressed at a time when our commerce was comparatively small. [Mr. C. here read an extract from an address to Congress from President Washington.] Mr. C. acknowledged that he had not experimental knowledge on this subject; but he appealed to the candor of those gentlemen who advocated this mode of defence, to accord to him that liberality which he would exercise towards them. He meant to impeach the motives of no man. He conceived that every gentleman would act according to the dictates of his conscience, and he claimed their indulgence to do the same.

He believed that gentlemen of the same political name throughout the Union differed more on this subject than on any other whatever. It was natural to suppose that gentlemen whose property was afloat on the ocean should wish to adopt those means of defence which should appear to be most useful, efficient, and necessary for that purpose.

Three-fourths, if not seven-eighths, of the mercantile interest, of whatever political opinions, from South and North, of the stockholders, commanders of ships, and officers on board of them, those persons whose property was at stake on the ocean, were in favor of the protection of commerce by ships of war, and did not feel that respect for gunboats which had been attributed to them. He felt confident that he now spoke the sentiments of the mercantile interest generally; and that part of it which he had the honor to represent, being in favor of the present Administration, were almost unanimously in favor of the protection of commerce by ships of war. Gunboats were merely an aid for repelling invasion; he contended that they were not calculated for deep waters, or for the protection of commerce in time of war, when the enterprise of our citizens should induce them to venture out. He had in his hands a late newspaper which he begged permission to read, from which it appeared that twenty gunboats had been entirely defeated by one single frigate and another small vessel.

Mr. C. said he was in favor of gunboats generally, but wished them to be somewhat limited in their number. It had been said that some able naval commanders had been in favor of gunboats. He was as well acquainted with Commodore Preble (whose opinion had been stated in favor of them) as any gentleman in the House; that officer was of opinion they might be useful in some circumstances, as in the waters of Tripoli; but had any man proposed to Commodore Preble to take command of an armament of gunboats, he would have shrunk from the offer. When an offer was lately made to Commodore ——— to take command of the gunboats, he accepted it and said he would do anything for the service his country might require; but, addressing himself to the gentleman who made him the offer, he begged if any larger ships were to be constructed, that he might not be confined to boats. Mr. C. thought, however, that the opinion of a commander of a squadron should not go further than that of any other officer, neither was he disposed to receive the dicta of any of the heads of departments on the subject; he was sent here by his constituents to legislate, and not to rely upon their opinions in his vote on any subject. He felt astonished when he heard gentlemen say they must do this or that, because it was agreeable to the opinion of the Secretary of the Navy. When he asked these officers for information, he was willing to receive it; but he did not want their opinions. The House had the opinion of the Secretary of War at the last session; he reported an opinion that $20,000 was necessary for fortifications the ensuing year. Did the House concur in this opinion? No, they appropriated $150,000 for that object. Mr. C. did not conceive the opinion of any person to be entitled to consideration by the House; it was their duty to act as they conceived to be correct, and to be guided by calculations from whatever quarter, when supported by reason.

The United States had formerly had a navy; it grew up under the first Administration, increased under the second, and had not decreased under the third. What was the cause why a navy was unpopular? Was it because of its inutility? Was it because it was degraded on the ocean? Neither; nor was the prejudice against a navy warranted by experience; for navies had been found useful and adopted by every nation under heaven. The true reason was, that the navy was augmented to serve offensively against France, when a large majority of the people of the United States believed (and with whom he himself thought) that the war then waged against that Power was a war against reason. The high-toned measures adopted on that occasion caused the diversion of the public sentiment; the increase of the Navy, as an abstract measure, was never disapproved of by the Northern States. It was there generally conceived that a navy commensurate with our means was absolutely necessary for the protection of our commerce. What rendered it unpopular, was, that it was intended to be used against a Power that had been friendly to us; to whom we considered ourselves as owing a debt of gratitude, and to whom we had so conducted ourselves, by an alliance with Great Britain, that she was almost justifiable in the measures she then pursued. This was the reason why that and other measures were at that time so extremely unpopular. Were the Navy now to be increased to repel aggression from any foreign Power, it would be regarded as a proper measure. He was not in favor of a large increase of our Navy; but he conceived it necessary to have a few large ships to drive from their ports scattering ships of an enemy. He thought himself not out of order, since the opinion of the Pressdent of the United States on the subject of gunboats had been read, verbally to quote his opinion on this subject. The President was in favor of large ships; he thought it was improper that any single ship should be able to block up a port or harbor of the United States; and that a remedy should be provided. Mr. C. thought that no danger could arise to the liberties of the people from an increase of the Navy; he called upon gentlemen who supported that doctrine to quote a single instance where any nation had lost its liberties from a navy. He did not himself consider an increase of our Navy necessary at the present moment, but it might be necessary at a future time; it would not therefore, be improper now to provide materials, that they might have them in readiness when wanted. At present their attention should be directed solely to the defence of their cities on the seacoast; but at any future time, when it should be made satisfactorily to appear to this Government that the nations of Europe were disposed to coalesce for the purpose of asserting those rights which were dear to every maritime Power, he hoped the United States would be ready and willing to join them in maintaining the freedom of navigation. It has been said, by some people, observed Mr. C., that we ought to lie by on our arms and avert the event of the European contest; let them alone say they, let Bonaparte fight it out with them. Now this was a doctrine to which Mr. C. could

not subscribe. If there was one great Power disposed to control and domineer over the ocean, and the United States had great property at stake, why not pay their proportion, their footing as it were? He considered an opposite conduct pusillanimous and unjust. They had more tons of shipping afloat, and were more largely concerned in the freedom of the seas, than any nation on earth, one only excepted; and should they say that they would lie by unconcerned, while the dearest rights of nations were destroyed by any one nation! It must be clear to every one that they should not, and yet, instead of increasing their defensive powers where they were assailable and most vulnerable, he was hurt to hear gentlemen propose means of defence for points perfectly unconnected with existing evils, which consisted in the harassing their navigation, and inflicting injuries on their floating commerce.

Mr. C. did not want ships for protection of our cities; he had no fear of their being burnt; he considered them as sufficiently protected by the proposed fortifications and gunboats, but all the money in the Treasury should not be applied to these subjects. The merchants of the United States were more concerned for the defence of their property which they had sent beyond seas than for the burning or sacking of our cities. Some cities, it was true, had been burnt during the Revolutionaiy War; but it should be recollected that the enemy then carried on a war of extermination, and even invited the savages to burn our towns. The war which was now feared was not a war of the same stamp; it would be merely a war for the right of trade, and not carried on in so sanguinary a manner.

Mr. C. did not believe that these gunboats would aid or increase the spirit of the officers and men employed in our marine service. It was not a little extraordinary that those gentlemen who had been in the habit of telling the House that they were opposed to all naval appropriations, opposed to fortifying our cities, opposed to commerce altogether, and wished the people of the United States were in the isolated situation of the Chinese, mere receivers of trade—it was indeed extraordinary that they should now force the Northern States to receive that protection which they did not want. Why not permit them to receive that species of protection which was most congenial to their wishes? In speaking thus, he certainly expressed the sense of the mercantile interest generally.

Many maritime nations had in different ages grown into existence; had risen and declined; but we read of none that ever refused to defend their commerce. This plan of defence was a new and untried thing; would it not be prudent to make the experiment on a smaller scale? Let me know by experiment, said Mr. C, that as many guns as a large frigate carried, distributed in gunboats, will conquer that frigate and I shall be convinced of their efficiency, but not till then. Mr. C. said he did not feel willing that so large a part of the resources of the country should be expended, for the purpose of trying new theories, to so great an extent as was proposed. He had at present very little opinion of the efficiency of blocks sunk in the channels of ports, for the purpose of impeding navigation, and preventing the approach of an enemy. If anything could manifest the people of the United States to be a pusillanimous people, it would be done by destroying their own harbors in preference to defending them; and the torpedo scheme was of the same stamp. Mr. C. predicted, that if these gunboats were built and there was no occasion for their service, they would not be competent to the transportation of tobacco, flour, or any productions of the country. A project had been hatched for deserting their cities, and running over the mountains, when attacked; it would be much the same with their gunboats—when an enemy approached, they would be obliged to abandon them. They would not answer; and in the event, this country would be compelled to adopt the same plan as other nations—and to erect a navy for the protection of their commerce. Last year when they were on this subject, fortifications were ridiculed, and it was almost as much as a man's head was worth to propose anything of the kind. Now, when dangers become more pressing, those very persons who were most opposed to them, considered money as well laid out in erecting fortifications.

He was happy to find, however, that one and all were determined to resist the enemy at the water's edge. He did hope the time was not far distant when every gentleman who felt interested in the common stock, to protect which was their common duty, would admit that the erection of a navy was an advisable, an indispensable measure of protection and defence. Was there any gentleman, however remote from the shore, who would not feel degraded and indignant at the knowledge that one single ship, of one hundred guns for instance, had laid under contribution the city of Charleston or Norfolk? Had the United States now any force to prevent such an occurrence? It was the opinion of gentlemen in this country, best acquainted with naval force, that the United States could muster no force sufficient to contend with a ship-of-the-line. Was it not time then to have such a force? He hoped this amendment might prevail, as a commencement to a naval force.

Mr. HOLLAND said, it appeared to him that the gentleman who advocated the motion for striking out part of the gunboats, had mistaken the object of gunboats; they were not intended for the protection of our commerce at sea, but for the protection of our ports and harbors; neither was the protection of our commerce contemplated by this bill. If they wished measures of that kind to be adopted, why did they not bring forward a proposition for the protection of our commerce at sea? They would then have the subject before them, and might properly consider it; but to go into a discussion on the subject of the protection of their commerce at sea, when the bill under consideration only provided for the protection of our ports and harbors, was extremely absurd.

It had been stated, as the opinion of General

Washington and others, that a navy was absolutely necessary for the protection of the commerce of the United States, and such a navy, too, as the United States could not afford to build. Gentlemen seemed to hope that the time was not far distant when this protection might be given. Mr. H. could see no ground for this hope, at a time when one particular nation possessed such a decided superiority in this force.

The gentleman last up had said that there was a time when a navy was more popular. The original object for building frigates was the protection of commerce against the Barbary Powers; it was not then expected that they would be called upon to protect it against the assaults of a maritime Power who possessed a fleet to oppose our force. Six frigates were two years ago intended to be erected for that object, in addition to those which the United States before possessed; an accommodation took place between the Barbary Powers which rendered them unnecessary, and they were not built. It was then contended by naval gentlemen that, although the United States were at peace, these frigates should still be built.

The gentlemen had cited a number of instances of nations who had possessed fleets. Had the fleets of Denmark protected her commerce? Had the fleets of Sweden protected her commerce? Had the fleets of any other nation than that of Great Britain in any measure protected their commerce? Had Great Britain, even, with the greatest fleet in the world, been able fully to protect her commerce? Every gentleman must know she had not, and that her merchant ships were almost daily captured. If gentlemen, however, wished a navy to be erected, let them bring forward a proposition in a plain and direct manner, and not involve it with the question now under consideration. They had not attempted to show that a fleet would give protection to our ports and harbors; they could not show it. If we had a fleet, (said Mr. H.,) there certainly would be sufficient depth of water for one fleet to follow where another has gone; and our fleet would certainly fall a sacrifice; and gentlemen know, if they contend for their efficiency, as a protection to our ports and harbors, that this consequence would indubitably follow. They had not attempted to show the utility of ships of war for this purpose; and if they could not show this, where was the necessity of making a proposition for building ships of war? The measure was impolitic, as it would not give protection either to the shores or commerce of the United States.

Had the former enlargement of our fleet been productive of any service to the United States? Instead of that it had been a disgrace; all the additional expense incurred in that object had gone to debase the Navy and lower the character of the nation. The Government of France, to affect our relations with whom it was professedly increased, paid no regard to it; whatever injury the Navy had done, the United States afterwards accounted for; and it did not operate upon the nation for whom it was intended.

Gentlemen seemed to admit that a certain number of gunboats might be necessary; and all the gentlemen in favor of the present motion took it for granted that the number now contained in the bill was too large. Had the gentleman last up, or any other gentleman, shown that there were too many estimated for any particular harbor? Mr. H. thought the present number too few. Were fifty too many for the defence of the port of New York? Gentlemen would not say that. They admitted that gunboats would have some effect; of course, in proportion to their number, they would be more effectual. Then why say there were too many?

Mr. H. concluded by hoping that gentlemen would confine their observations to the bill before them, which contemplated the protection of our ports and harbors, and not the protection of our commerce.

Mr. Chandler said that his colleague (Mr. Cook) was much mistaken when he supposed, in saying what he did, that he had spoken the opinion of the people of the North generally with respect to the mode of defence by gunboats; as far as Mr. C. knew their wishes, he believed they would be satisfied with such protection as the Representatives of the Union should think proper. The gentleman, said he, was in labor a considerable length of time, and I really thought at one moment that he would bring forth a mountain; but it proved a mouse at last. The gentleman had told them that it was the opinion of merchants that they must have protection for their commerce abroad, and that the sacking and burning of cities was nothing to them. What credit was to be given to the opinion of merchants of this description? None at all. The gentleman had said a great deal about flying to the mountains, and had himself ascended very high on the subject. Mr. C. begged him to descend into the plains, and be satisfied with that mode of protection which was most proper to be adopted. As to the amendment, he thought, with the gentleman from North Carolina, that this bill was intended for the protection of our ports and harbors, and that it would be improper to drag anything else into it.

Mr. Gardner said, the gentleman from North Carolina appeared to have alluded to him in his observations. If that was the case, the gentleman must certainly have misunderstood him; for he could assure the gentleman, whether the amendment under consideration prevailed or not, the bill would meet with his support; but he wished to vote for striking out sixty-four of these boats, because he thought it would be more agreeable to the people in the country in which he lived. Mr. G. did not mean to say that the gentleman was particularly partial to this mode of defence; all he meant to say was, that, in his zeal to support this measure, he lost sight of other modes of defence necessary to be adopted. He did not mean to accuse the gentleman of improper conduct as a member of the committee or of the House. Mr. G. had been in hopes that they might all have been gratified in their partialities. He had hoped to see some other modes of defence incorporated

with this, and that no preference should be given to any particular mode.

Mr. SMILIE called for the reading of the report of the Committee on the Military and Naval Establishments; which being read,

Mr. S. said, if the gentleman from Massachusetts (Mr. COOK) had thought of this report, he would not have made so long a speech on this subject. The gentleman wished that all systems of defence should go hand in hand. He must know that they could not decide upon two bills at once; the different modes would come forward in time, and gentlemen might then propose as many ships as they thought proper. Whether the House would defend their commerce by a navy, would be decided when the report of the committee on that subject should be taken up. It was very extraordinary, when such a report was upon their table, that the House should wish to introduce the question of a navy here. The gentleman might be assured that the report would be taken up. At the same time that he should vote for considering that report, he did not wish to deceive the gentlemen; for they might also be assured that he should not then, or at any other time, vote for a single ship of war; because he believed that the United States could not effectually protect their commerce by any naval force they could raise. He did believe that by establishing a navy they would raise a foreign enemy. He did believe, that were they to station at New York a navy as large as the resources of the United States would warrant, they would soon see a second edition of the attack on Copenhagen. He hoped in God they would permit this bill to pass, that some step might be taken for the defence of their ports and harbors, for it was high time that object was commenced.

Mr. COOK said it was common for nations, in time of war, to permit privateering; in our former war a great many had sailed from our ports. The prizes of these privateers could not be protected except they had some large ships for the defence of their ports. Their use was so obvious to all men conversant with these things, that any argument on the subject was unnecessary.

It had been asked why they wished to introduce this subject at this time? It was, Mr. C. said, because if the Treasury was exhausted for one object, there would be no money left for other modes of defence. If a man almost destitute of clothing had money sufficient to buy a coat of fine cloth, and no other garment, should he lay out all his money on a fine coat, when he was otherwise ragged? Mr. C. wished the country to be decently clothed throughout.

Mr. C. would correct the gentleman who had understood him to say that the people in the North were all in favor of gunboats. Mr. C. said he had stated what he knew to be a fact, that gentlemen in the mercantile cities, those most concerned in the question of peace or war, whose property was at risk, did not agree in the opinion which appeared to be entertained of the utility of gunboats.

He would merely reply to the gentleman from Pennsylvania, who had been so candid as to say, that, whenever a question was taken on a Naval Establishment, he should give it his decided negative. He was sorry to hear that gentleman say that he would give a decided negative to any question. And questions had been decided in which that gentleman had given his vote in favor of a Navy. Mr. C. said they had a Navy already, and he wished gentlemen to recollect that it was not a new thing. It was now no question whether they would have one or not. The question was, whether they had just enough or too much? Not whether they would now establish a Navy, but, whether they would increase that which they already had? Let any gentleman ask, when they formerly built a Navy, if it was then called for by actual emergency? Let him ask whether it was now sufficient for defence? Mr. C. hoped they would meet the question now, and decide it upon the same principle on which a Navy was formerly commenced.

Mr. FISK said, the gentleman from Massachusetts was opposed to this measure because it would take all the money out of the Treasury. He should show: *First*, That it was beyond their means; and *Second*, That it was not a measure of exigency. Would he be willing to leave our ports and harbors unprotected, and go abroad to protect our commerce? Mr. F. did not think that the merchants of the United States would support that doctrine. If they did, he wished they were out of the United States. The gentleman had told the House that his feelings had been wounded at the deference shown to the statements of the Secretary of War, and a few minutes after, read an extract from an English newspaper, giving an account of a transaction which had taken place between gunboats and English vessels. Mr. F. confessed he was not a little surprised at his preferring the authority of English newspapers to that of the Head of a Department in our own country. A gentleman who did this, might be allowed to indulge in the spirit of prophesy. He had said, if they adopted this measure, they would soon feel the effects of it. Mr. F. wished the gentleman would show how. The gentleman had said, because a few towns were burned last war, the House seemed to think that the war which was expected would be a war of extermination; but, that this was to be a harmless war, a mere war of trade. He would ask that gentleman what was the conduct of Great Britain towards Denmark? Had they spared the town of Copenhagen? He believed not. Would they spare the towns of New York or Norfolk, if it were in their power to destroy them? He thought not. Mr. F. thought the great question now was, What was the most efficient force—what would afford the most complete protection to our ports and harbors? The gentleman had said that they had now no force which could contend with an eighty, or ninety-gun ship. If that were the case, Mr. F. said his argument completely recoiled upon himself. They had now eight or ten frigates, and if these could not contend with one eighty or ninety-gun ship, they had better stop where they were,

and not erect more of such inefficient force. Let us consider the subject for a few moments, said Mr. F. This is not an untried force; it was tried before that gentlemen had existence. The instance mentioned by the gentleman from North Carolina, (Mr. SAWYER,) might have shown that this force would be sufficient. It was the opinion of a most experienced naval commander, and whose standing and information entitled him to more than ordinary credit, that he would rather have four gunboats than a forty-four-gun frigate. A frigate could not carry the same metal as a gunboat. If a frigate was dismasted, becalmed, or any accident whatever happened to her, she could not get out of the way. These reasons should have weight on the minds of any gentleman, particularly of one who did not pretend to experimental knowledge on this subject. If the Treasury was as low as it was said to be, they should surely pursue the cheapest means of defence. By adopting the mode of defence by gunboats, in preference to defence by frigates, they would have, at the same expense, a third more in number of guns, besides double the weight of metal. With gunboats there was no loss of time in putting about. Not so with a frigate. She must first discharge one side, and then go about, before she could fire the other. But, gentlemen who were steeled against conviction, and determined, at all events, to have a Navy, would not be influenced by argument or reason. Had not Denmark a Navy? What became of it? It fell into the hands of a superior naval Power, and that will be the fate of our Navy if we erect one.

Mr. GARDENIER said, that though in favor of a Navy, yet he thought this topic would be better discussed at another time. As to gunboats, there seemed to be various opinions on their utility. He thought it better, upon the whole, that this bill should pass. For himself, he should vote for the highest number; not so much that he believed in the efficacy of these machines, being of a contrary opinion, but because it was an experimental measure. It was a matter of speculation whether these gunboats would answer the desired purpose, or not. If not, the nation would lose the money expended on them, but they would have made an experiment of their efficacy, and it would not be tried again. If, on the contrary, they did answer, and the number should be more than necessary, it would be an excellent surplus. Although he should vote in this manner, he did not wish it to be understood that he was at all friendly to gunboats. He had, with others, been guilty of laughing at these boats, which had been so much complained of. The nation had been accustomed to the operations of our infant Navy. So far as it had developed its powers, its success had done honor to the nation, and had also produced a sentiment in other nations, which was calculated to impress the people of this country in its favor. The Navy and gunboats never came in contact without producing comparisons unfavorable to the latter. Our commerce had been amply secured by the protection which this infant Navy had afforded it. It was not, therefore, to be wondered at that it had been popular. It was still popular, and the only objection was to the expense attendant on it. When, however, the Navy was suffered to go into decay, when that system, recommended by the author of the *Notes on Virginia* was abandoned, these gunboats were introduced. He agreed with the gentleman from North Carolina, that gunboats were no part of a Navy. Gunboats did not attach exclusively to the ocean or to the land, but belonged to both. The gentleman was, therefore, right, when discussing this subject, not to consider them as a naval armament, but as a land defence.

In a Government like this, it must be expected that a great many men would have their different speculations; if the House determined to adopt no system, but that which met with universal approbation, they would adopt none at all. In the operations of Government, a great many objects must prove unsuccessful. Every thing which promised safety or protection should be tested by experiment. Thus those who could not convince themselves entirely of the utility of gunboats, might vote for them by way of trial. Mr. G. was in short for adopting every mode of defence which should be suggested, except its expense should be totally beyond our resources. He was for giving a fair trial to any mode that should be suggested by any respectable man; and he hoped that other gentlemen would grant them the same indulgence as related to fortifications. In New York, the people were of opinion, that substantial fortifications were better than gunboats. It was however better that an estimate of the expense should be gone into, than that, for want of a proper expenditure, some of the most important cities in the United States should be left unprotected. He thought this was a time in which gentlemen should not adhere too closely to their particular opinions. Money expended in the purchase of gunboats would be well thrown away if fortifications alone were sufficient for defence. They should not stand on calculations of expense at this time; one single question ought to be asked: What was necessary to be done for the national safety and honor? And that ought to be done, whatever might be the expense. If they went on a contrary principle they would suffer not only from depredations of the enemy, but from the loss of national character, because they did not choose to go to a sufficient degree of expense for their effectual protection.

Mr. G. hoped gentlemen would deliberate; he hoped they would reflect upon the awkward situation in which they were placed, and that all the means of the nation would be brought into operation.

Mr. THOMAS said that the gentleman on his right, his colleague (Mr. GARDENIER) had told the House that he should vote to build the whole number of gunboats, not because he thought them an efficient defence, but because he considered them feeble machines. This reasoning might be conclusive in the mind af that gentleman, and he did nor care what influenced him, since it appeared they should have his vote for the bill.

However, Mr. T. said, he merely rose to reply to one remark of that gentleman. He knew that it had been rung through the country, by electioneering gentry, for these number of years, that the formidable navy, so carefully raised by the former Administration, had been sold off by the present one, and the nation left without defence; and that gentlemen (Mr. G.) had repeated the same story, that the formidable navy which had been raised with so much care had been sold off, to the eternal disgrace of the nation. Hearing this assertion, Mr. T. thought it his duty, on that floor, to declare that not a single national ship had been ordered to be sold since the present Administration came into power; that not a single vessel had been sold except from orders issued previous to the time that the Administration of this Government was taken out of the hands of those coinciding with that gentleman in political sentiment.

Mr. MASTERS, observing the impatience of the Committee for the question, should not have arisen at this late hour, was it not, he perceived that the opponents to the building of frigates mistook the ground taken by the advocates of the amendment. They suppose, (said Mr. M.) that we are for a navy to such an extent as might be competent to meet the British fleets at sea. None of us have advocated such a doctrine. Mr. M. said the question was, would they reduce the number of gunboats from one hundred and eighty-eight to one hundred and twenty-four, and add four frigates. We contend, said he, that gunboats are of no use in deep water and boisterous weather; the advocates of gunboats have conceded that point. We have also conceded that gunboats are useful in calm and shoal water. The frigates were therefore a necessary defence in those harbors which had deep water, more especially in windy seasons, at which times gunboats were not even an auxiliary to forts and batteries; frigates would also serve as a partial protection to commerce. Many arguments had been used to attempt to show that gunboats were preferable to frigates. He understood the gentleman from Vermont, (Mr. FISK) to say that gunboats were the cheapest mode of defence. He should heve no objection to take issue on that point, and go into a calculation, and should be able to prove, by the documents of the Secretary of the Navy, that the building and keeping in service for one year thirty-two gunboats, carrying one gun each, would cost seventy thousand dollars more than two frigates of thirty-two guns each, kept in service for the same term of time. Some gentlemen said gunboats ought to have the preference, because they excited emulation among the sailors. It was the first time he ever heard there was more rivalship and pride among sailors for the gunboat system than for ships of war. Gentlemen advocated the utility of gunboats in preference to frigates, because the Turks once gained a victory over the Russian ships of war; but they did not pretend to give the particulars of the engagement. They undertook to show the superior use of gunboats at Algeziras and Tripoli. As to the gunboats at Algeziras, (Mr. M. said) they never have gained a victory or taken a single ship of war at Gibraltar. These had in one or two instances, in calm weather, annoyed their enemy by a few shots, and skulked back into port. He was told by an officer, who was entitled to credit, and was in the engagement at Tripoli, that there was not one shot in six that ever reached the town, and that the bolts of many of the boats started at the beginning of the attack on the town, and were dismasted and towed from the harbor. Some gentlemen had said that increasing our Navy by building ships of war was unpopular, and that gunboats were popular. Mr. M. hoped the gentlemen did not mean that mushroom popularity which raised a man to-day without merit, and would execrate him to-morrow without demerit. He should always pay respect to the candid reports and unbiassed opinions of those who had enjoyed an opportunity of judging correctly. Let the measure be popular or unpopular, he should exercise the office of speaking the truth, as was the duty of every honest man; and if he was convinced that it was for the interest of this nation to build frigates, he should declare it publicly in his place, and boldly combat any difficulties which the measure might encounter, and abide by the consequences.

The amendment offered by Mr. DURELL was then negatived—ayes 19.

The bill being about to be read a third time this day, its decision was, on motion of Mr. ELLIOT, postponed till to-morrow.

THURSDAY, December 10.

FORTIFICATIONS AND GUNBOATS.

The bill sent from the Senate, entitled "An act to appropriate money for the construction of an additional number of gunboats," together with the amendment agreed to yesterday, was read the third time.

Mr. ELLIOT.—When an humble and uninfluential individual, voluntarily isolating himself from the several great parties that divide, distract, and ruin our devoted and degraded country—our devoted and degraded country—(I repeat the expression, sir, for I know it to be as consonant to the rules of order as I shall prove it to be incontestably true;) when such an individual rises to deliver his sentiments upon an important subject of national concern, it would seem that the singularity of his situation might attract attention, however deficient he may be in the solid powers of argument, or the brilliant tones of eloquence. But these are inauspicious times. These are not the *mollia tempora fundi*—the soft reasons of persuasion—the calm hours of peace. They are times of alarm and denunciation. For myself, peculiar and almost irresistible reasons would impel me to continue silent, not only this day, but for the short remainder of my political existence. But there are periods when silence is almost equivalent to an abandonment of duty. Private afflictions, as inconceivable by others as they are indescribable by my myself, were I disposed to describe them, indispose me for political exertion. There are times, however, when even the most refined feel-

ings of the human heart should give place to the sublime energies of the human mind. When imperious duty calls, the latter should be exerted, even if it be only that the former, when the great effort is over, should resume their empire with more exquisite sensibility.

The present is one of those great crises that rarely occur in the annals of nations—it is, indeed, a crisis of most awful moment. Our political day of hope and joy and peace is suddenly overcast with thick and dark clouds. In the language of sacred oriental poetry, it is a day of darkness and gloominess—a day of clouds and thick darkness—as the morning spread upon the mountains.

I must be indulged in a few more preliminary remarks, before I proceed to that connected, but perhaps not systematic view which it is my intention to take of the subject under consideration. I have never risen upon this floor to recite by rote a written declamation; but every one who speaks here owes it to himself, to those who hear him, and to his country, to have deeply studied his subject. I have therefore availed myself of all the information which I could possibly obtain upon the subject of gunboats. In the course of my remarks, I may be led to describe certain classes and orders and genera and species and varieties of political characters, whose inauspicious influence, at the present moment, may entitle them to attention. I may describe them with fidelity, and my duty to my country would require that I should endeavor to deliver them, bound hand and foot, to the contempt and indignation of their country and posterity. Still, I can most cordially reciprocate the declaration made the other day, from a most respectable quarter, (Mr. Randolph,) that I am the personal enemy of no man; and would to God that no man was my personal enemy! But, though we may wish for peace with all men, there are certain sacred public duties which must be performed at all events.

In casting my eye over the various documents upon the table, my attention is for the moment attracted by one which has been placed upon it this morning—a report from the Committee on Revisal and Unfinished Business, upon matters undetermined at the last session. In this I find mention made of several propositions upon the subject of the defence of the nation, which I had the honor then to propose, and which it was not the pleasure of the House then to act upon. Propositions of a similar character, so far as respects the fortification of the ports and harbors, the organization and arming of the militia, and the equipment of the frigates, it is now hinted, will be carried into effect in the course of the present session. I am happy that my doctrines are becoming popular, and that there is some prospect of their adoption. But it is because I fear, and indeed believe, that the present bill is pressed upon us for the purpose of superseding every measure of national defence which would comport with the true interest and the honor of the nation, that I am so decidedly opposed to it, and that I consider the Republic degraded, by the substitution of a weak and miserable policy for measures of a manly and magnanimous character, at a crisis which peculiarly requires them.

The principal argument, although this does not seem to be openly avowed, in favor of the present measure, is the supposed predilection of the Executive for this system of defence. Indeed, this is but a new edition, or rather a new volume, of the celebrated proclamation and gunboat system, which, instead of elevating us in the scale of nations, has greatly sunk the national character. The objects in view are to protect the commerce of the Union to a certain extent, and to protect our coasts and seaports. Of course this measure is to constitute a material, if not the principal part of a general system of national defence and protection. The object is proper and patriotic, and it is a subject of deep regret that the means are inefficient. But history and human experience have settled the true character of these machines, and as we have nothing else to hope for, we can expect nothing like an energetic and effectual system.

Commerce is undoubtedly entitled to protection, from considerations as important as they are obvious. In itself it is friendly to civilization and rational freedom. There is a more intimate and more widely extended connexion between agriculture, the "art of all arts," and commerce, in the United States, than the world has ever witnessed in other ages and nations.

The protection of commerce was one great object which the people had in view in the formation of the present Constitution, and by that instrument, taking into view the peculiar circumstances which attended its formation and adoption, the agricultural portion of the community is pledged to the commercial, to support such measures as may give effect to that great object of the Union.

The organization of an efficient general system of national defence, is of great importance in various points of view. It will tend to the creation and establishment of a correct and commanding national character. It will command the respect and confidence of foreign nations, and thus prevent foreign machinations against our internal peace, and preserve the relations of amity with all nations. It will be auspicious to the preservation of the Union, and the true republican principles of the present Constitution.

It is natural to pass from the consideration of the character of the present crisis, and the circumstances which imperiously demand a system of efficiency and energy at the present period, to that sacred bond of our Union, in which are pointed out the duties of the Government—the Constitution of the United States. In the third section of the second article we read, "The President shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient."

The President *shall* recommend. The voice of the Constitution is imperative. It makes it the duty of the Chief Executive Magistrate to take upon himself the responsibility of explicitly

recommending to the Legislature such measures as he deems the public welfare to require. In making the inquiry, in what manner has this great and solemn duty been performed at the present moment? the transition is easy to the Message of the President at the commencement of this session. These messages, as public documents, and addressed exclusively to the Legislature, are certainly fair subjects of criticism; and whoever shall be impelled by duty to speak unpleasantly of the present system of administration, will have an abundant source of rich consolation in the reflection, that, when gunboats are the subject of discussion, it is impossible to be out of order. The present system begins and ends with gunboats. In the Message to which allusion has been made, which should have been as a polar star to guide us at this dark season, not a single measure is explicitly and unequivocally recommended. I will read that part of it which relates to the Naval Establishment:

"The gunboats already provided have been chiefly assigned to New York, New Orleans, and the Chesapeake. Whether our moveable force on the water, so material in aid of the defensive works on the land, should be augmented in this or any other form, is left to the wisdom of the Legislature. For the purpose of manning these vessels, in sudden attacks on our harbors, it is a matter for consideration whether the seamen of the United States may not justly be formed into a special militia, to be called on for tours of duty, in defence of the harbors where they shall happen to be; the ordinary militia of the place furnishing that portion which may consist of landsmen."

Here the Executive submits certain matters for consideration, without assuming to himself the responsibility of expressly recommending them. In relation to the Naval Establishment, he only talks of a moveable force on the water; and if we should build our flotilla of two hundred and fifty-seven gun boats, at an expense which will be shown to be enormous, and, in the event of a war with Great Britain, two or three British ships-of-the-line, and as many frigates, should come upon our coast, and blow them all to atoms, as would infallibly be the case if they were to come in contact with them, we shall no doubt be told that a wise and prudent Executive never recommended such an ill-judged, degrading, and disastrous measure. But for what purpose are gunboats to be built? To protect commerce and the coast. Every one knows that we cannot protect our commerce in every clime and on every sea, against the naval power of Great Britain. It would be unwise, therefore, at present, to exhaust our resources by building a Navy of ships-of-the-line. It does not follow, however, that nothing can be done; that we cannot support our own jurisdiction. Nothing effectual, it is certain, can be done by gunboats. They have never been of use but as auxiliaries to more extensive and substantial establishments; and they have always been of so little comparative use, as to render it impossible to ascertain the amount of the service they have rendered. We may safely challenge their advocates to produce a single instance in which, alone and unconnected with works of more consequence, they have been of any essential use at all, for purposes either of offence or defence. In my researches into their history I have met with no instance of the kind. Here I shall advert to a document, the reading of which has been called for by the honorable chairman of the committee on that part of the President's Message relative to aggressions committed within our waters, and with which I should not otherwise have troubled the House. I do it at this time, because I find my voice failing so fast that I shall be unable to go so fully into the subject as I originally contemplated. This I shall not regret myself, and still less will the House regret it. In the Message of February 10, 1807, communicating the information requested by the House of Representatives in relation to the utility and efficacy of gunboats, we find, indeed, that gunboats apparently constitute but a subordinate species of defence, and yet they are spoken of as competent to almost all the purposes of national protection. A flotilla of no less than two hundred is contemplated. The President says: "Under present circumstances, and governed by the intentions of the Legislature, as manifested by their annual appropriations of money for the purposes of defence, it has been concluded to combine, 1st. Land batteries, furnished with heavy cannon and mortars, and established on one of the points around the place selected for preventing vessels from lying before it; 2d. Moveable artillery, which may be carried, as occasion may require, to points unprovided with fixed batteries; 3d. Floating batteries; and 4. Gunboats, which may oppose an enemy at his entrance, and co-operate with the batteries for his expulsion."

We have then the opinions of Generals Gates and Wilkinson in favor of gunboats; men of very dissimilar character, and, I trust, of unequal fame, but whose knowledge of this particular mode of defence may possibly have been perfectly upon a level. The Message proceeds: "The effect of gunboats for the defence of harbors, and other smooth and enclosed waters, may be estimated in part from that of galleys, formerly much used, but less powerful, more costly in construction and maintenance, and requiring more men." Here it is proper to remark, that as, by an unfortunate coincidence of circumstances, an adventurer, of the name of Americus, has robbed Columbus of the glory of giving his name to the New World, so, by a like unlucky concurrence of events, gunboats have usurped the honors due to galleys: "But the gunboat itself is believed to be in use with every modern maritime nation for the purpose of defence. Algiers," &c. That the gunboat is in use in the Mediterranean and elsewhere, there can be no doubt; but the question is, of what use is it? What effect does it produce? This we are yet to learn. "The effect of gunboats at present, in the neighborhood of Gibraltar, is well known, and how much they were used, both in the attack and defence of that place, during a former war. Every man, it is true, who seeks for military or naval informa-

'tion, has read the account of the siege of Gibral-'tar, crude and inelegant as it is. I have read it 'repeatedly. But I do not there discover that 'gunboats, alone and unconnected with other 'means of 'attack and defence,' were ever found 'to produce any important effects." "By the 'northern Powers of Europe, whose seas are par-'ticularly adapted to them, they are still more 'used." This is certainly correct information. A late writer informs us that the gunboat, properly so called, and which is a very different vessel from a galley, was first used with effect, in the naval wars between Russia and Sweden, in the Baltic, where no tides interfere with their maœuvres, and where few winds or currents obstruct their operations; and suggests that the use made of them in those wars, first led France to use them against England. We are next presented with the evidence, which is to prove conclusively that a flotilla of gunboats can defeat and destroy a navy of ships-of-the-line. "The remarkable 'action between the Russian flotilla of gunboats 'and galleys, and a Turkish fleet of ships-of-the-'line and frigates, in the Liman Sea, in 1788, will 'be readily recollected, the latter commanded by 'their most celebrated Admiral, were completely 'defeated, and several of their ships of the line 'destroyed."

This is the information which we have so long been in search of, and would be conclusive if it would bear examination, but unfortunately this is not the case. In the first place, we may inquire where is the Liman Sea? In what region of the globe is it situated? *Dic quibus in terris et eris mihi magnus Apollo.* A lake, or rather an expansion of the rivers Bog and Dnieper, above their junction with the Black Sea, is nicknamed the Liman Sea. Upon the subject of the action here alluded to, it is probable that sources of information are accessible to the Executive which are not open to others. But it is observed that the circumstances of the action will be readily recollected—by whom? Undoubtedly by common readers who have access only to common information. I have not only consulted the professed annals of the times, but have obtained some information from a writer who appears to have been personally acquainted with the scene of action. This and several other actions which took place between the Turks and Russians in that quarter are called by these writers amphibious engagements, scarcely to be considered as possessing a naval character. It appears that the Russian flotilla occupied the shoals near Kinburn or Kilburn, (for the place is called by different names by different writers,) and was covered by the cannon of that fortress; that it did not consist entirely, nor, indeed, to any great extent, of gunboats, but was composed of frigates, brigs, and galleys, with some boats; that the Turks, finding themselves unable to approach the Russians with their ships, so as to be able to cannonade them with effect, set themselves to work to form a light armament similar to that of the Russians, that that they might meet them upon equal ground; and that they did form such an armament, more numerous than the Russian, but far inferior in construction, equipment, and seamen. Yet the Turks are said to have lost the victory in consequence of their ignorance of a river which had been in the possession of their empire for ages. They did not attack with ships-of-the-line and frigates, but with frigates, galleys, and boats belonging to the ships of war. The Turkish vessels, before their fire could produce any effect, began to stick in the sand; the Grand Admiral's frigate, not "ship-of-the-line," stuck fast; in this situation five vessels were burnt and two taken, and the remainder of the scattered flotilla fled for shelter—and whither did they flee? To the ships-of-the-line! Instead of the ships being destroyed, they remained firm at their post, and when the remaining vessels of the flotilla reached them, they were out of danger!

Thus it appears that no such battle as that described in the Message of the 10th of February ever happened. We have yet to see, if indeed the world ever can see, a naval action between a flotilla of gunboats and galleys and a fleet of ships-of-the-line and frigates, in which victory shall declare for the former. For two flotillas, or fleets of similar structure and equipment to engage, and for one of them, assisted by the cannon of a powerful fortress, to defeat the other, and capture and destroy that portion of it which is actually stranded, is certainly a very different thing from what it would be for a flotilla of gunboats to defeat and destroy a fleet of ships-of-the-line.

The Message concludes with the following remarkable suggestions:

"At times when Europe as well as the United 'States shall be at peace, it would not be propos-'ed that more than six or eight of these vessels '(gunboats) should be kept afloat. When Europe 'is in war, treble that number may be necessary 'to be distributed among those particular harbors 'which foreign vessels of war are in the habit o 'frequenting, for the purpose of preserving order 'therein. But they would be manned in ordina 'ry, with only their complement for navigation 'relying on the seamen and militia of the port, i 'called into action on any sudden emergency. I 'would be only when the United States should 'themselves be at war that the whole number 'would be brought into active service, and would 'be ready, in the first moments of the war, to co-'operate with other means, for covering at once 'the line of our seaports. At all times those un-'employed would be withdrawn into places no 'exposed to sudden enterprise, hauled up under 'sheds, covered from the sun and weather, and 'kept in preservation with little expense for re-'pairing or maintenance."

It is next to impossible for a man of common sense not to consider himself under some strange delusion of the senses, when he hears the Chief Executive Magistrate of a great and powerful nation invite the Legislature to the adoption of such a system as is here described. Build neither more nor less than two hundred gunboats, comfortably house in dry sheds upwards of one hundred and ninety of them; in time of peace keep six or eight of them, unmanned, relying on militia to man them

afloat, for the protection of several large commercial cities and two thousand miles of seacoast; when Europe is in war, and her navies come to our ports, launch eighteen or twenty-four gunboats to keep them in order while they stay upon our shores; and when they make war upon us, open your dry sheds, pour upon the ocean your two hundred gunboats, you are safe, your arms are triumphant!—If this be not a degrading and disgraceful substitute for an efficient and honorable system of national defence, it is difficult to imagine what could possibly degrade and disgrace the Republic.

Annexed to the Message are the opinions of several military and naval officers, some of them celebrated and some of them obscure. Gen. Gates, whose memory we all venerate, has been mentioned. He merely gives his opinion, and furnishes no particular information upon the subject. He is followed by Gen. Wilkinson, the hero of the Sabine and New Orleans, the man who violates your Constitution at the point of the bayonet in order to preserve it inviolate; the idol of popular delusion for the moment, but the object of a very different homage from the wise and good. Unfortunately, the letter of this great character conveys no information. The circumstance is explained by the following note: "This letter was only the cover of General Wilkinson's opinion, and therefore shows only in general terms what that opinion was. The opinion itself was, on a former occasion, communicated to a committee the House of Representatives, and was read to the House for its information. This paper cannot now be found; which is the more regretted, as it went much at large into the reasoning on the subject." That this paper has gone to oblivion is certainly a subject of great regret; and yet it may be doubted whether its destruction is so great a loss to the maritime and commercial world as that of the original record of the Rhodian laws. Commodore Barron says: "Ten or twelve of these boats will probably be sufficient to compel to remove from her position a frigate, and so on in proportion to the size and number of the enemy's ships. To do more than annoy would be difficult. With those vessels a great number and a long time would be necessary to capture a ship of war; but few commanders would feel secure while open to the attack of an enemy, which, however inferior, he could not destroy." This is all very candid and very strong reasoning against the cause it is produced to support. It is matter of regret, however, if it ever has been ascertained that gunboats have been able to remove a ship of war from her position, that we have not been put in possession of that information. The following remarks are taken from the communication of Captain Tingey: "The efficacy of gunboats in the defence of coasts, ports, and harbors, must be obvious to every person capable of reflection; when it is considered with what celerity they can generally change their position and mode of attack, extending it widely to as many different directions as their number consists of, or concentrating 'nearly to one line of direction. Such, indeed, is 'believed to be the great utility of gunboats for 'defence, that, notwithstanding the gigantic power 'of the British Navy, in its present state, a judi'cious writer in the British Naval Chronicle, after 'advising a plan for raising a fleet of 150 or 200 'gunboats to assist in repelling the threatened in'vasion of that country, says, 'a gunboat has this 'advantage over a battery on shore, that it can be 'removed at pleasure from place to place, as occa'sion may require, and a few such vessels, carry'ing heavy guns, would make prodigious havoc 'among the enemy's flat-bottomed boats crowded 'with soldiers." Surely we do not expect the British will come to invade us in flat-bottomed boats. If they should do so, we may array this miserable machinery against them, and shall probably be victorious. It is the misfortune of all the advocates of gunboats that they are obliged to deal in general assertion, and can produce no clear and unequivocal instance of their usefulness. Instances of an opposite kind are numerous, one of which is particularly recollected at this moment. Soon after the commencement of the war preceding the present, between France and England, a French flotilla of fifty of those boats attacked the little island of St. Marcou, called a "Dot in the Channel," and were blown to atoms. Still we were required to have faith—a degree of faith greater than would remove mountains—in this species of naval armament. Our gunboat projectors imitate a celebrated eye-maker of Constantinople. He was so ingenious as to be able to counterfeit, almost to perfection, so far as appearances would go, the human eye. The Grand Vizier, or one of the great Muftis of the Court, having had the misfortune to lose an eye, applied to this manufacturer of that article to supply its place. He was accordingly furnished with one, which was well placed in his head, exactly resembling the one which he had lost. He could not, however, see with it, and when he complained of this defect, he was informed that it was not to be expected that he could discern objects with the new eye at once, but that in time it would be as useful to him as the old one. So it is with gunboats. They have never been of material service to any nation; but we are told to build and believe in them, and they will one day protect us against all the world.

The next great argument in favor of this establishment, is, that it is an economical one. Let us examine its economy. It is said, in Great Britain, that it is as expensive to maintain one man in the navy as four in the army. Each gunboat must be commanded by a commissioned officer; and it is understood that thirty men—some say forty—will be required for each boat.

If we estimate the whole expense of maintaining an officer at only $1,000, (the real expense will be $1,500 at least,) and 30 men at $500 each—pay, clothing, provisions, and miscellanies, included—the amount for 257 gunboats for one year will be	$4,112,000 00
But if we deduct 10 men, which is $5,000, from each boat - - - - -	1,285,000 00
The annual expense will be - -	$2,827,000 00

Which does not materially vary from the calculation of the Secretary of the Navy, who estimates the annual cost of each boat in actual service at $41,039 46—making, for 257 boats, the sum of	$2,827,141 22
He estimates the expense of building them at $5,000 each	1,285,000 00
The armament at $1,200 each	308,400 00
Exclusive of cannon, which Congress have this session provided for, at expense of	112,500 00
The expense of the flotilla of 257 boats, for the first year, is	$4,543,041 22

Can it be possible that this is an economical establishment? Are we prepared to expend, in one year, four millions and a half—in two years, eight millions of dollars—upon such an unpromising experiment? For one, I am not sent here to squander away the people's money in this manner, and upon such objects.

Before we incur an expense so enormous, we ought at least to examine the state of our finances, and to inquire, What will be the situation of our revenues and resources in time of war? The annual report of the Secretary of the Treasury, at the commencement of the present session, contains a new project of finance, and certainly a very extraordinary one. It is calculated for a period of war, and it is proper to examine it, and endeavor to discover from whence our annual appropriation of three millions of dollars, for gunboats alone, is to come in that event. The Secretary says: "It appears necessary to provide a revenue 'at least equal to the annual expenses of a Peace 'Establishment, the interest of the existing debt, 'and the interest on the loans which may be raised. 'Those expenses, together with the interest of the 'debt, will, after the year 1808, amount to a sum 'less than seven millions of dollars; and therefore, if the present revenue of fourteen millions 'five hundred thousand dollars shall not be diminished more than one-half by a war, it will still be 'adequate to that object, leaving only the interest 'of war loans to be provided for." The project is, (calculating that seven millions of ordinary revenue will still be collected in time of war,) to raise by new taxes an annual sum equal to the interest of war loans—that is, the whole sum necessary to carry on the war; for we are to borrow every cent of it, and leave the people to pay the interest as it accrues and increases from year to year. The annual expenses of war, including the support of an army of forty thousand men—which number, at least, will be necessary to take and keep possession of Canada and Nova Scotia; and every one seems to believe that must be done if we go to war; and indeed it is all we can do, besides defending ourselves—will probably not be less than twenty-nine millions of dollars. It is unnecessary to trouble the House with all the minutiæ of calculation which have produced this result in my own mind, but I can confidently appeal to military men for a decision that it is not overrated. We are, then, by this new plan of financial operations, to pay the interest of twenty-nine millions for the first year, of double that sum for the next, and so on; for, as we are to pay nothing towards the principal, and to pay the interest as it becomes due, we must pay, at the end of the first year, one year's interest on the first loan; at the end of the second year, a year's interest on the second loan, and another year's interest on the first, and of course increase our taxes as the interest of the war loans augments. The system is peculiarly ingenious, as our taxes are to be increased in the inverse ratio to our ability to pay them. In proportion as we become impoverished by war, our burdens are to be increased at an enormous rate, as will appear by the following calculations, in which the interest is reckoned at six per cent. per annum:

	Principal borrowed.	Interest to be paid.
First year of war	$29,000,000	$1,740,000
Second do.	29,000,000	3,480,000
Third do.	29,000,000	5,220,000
Fourth do.	29,000,000	6,960,000
Fifth do.	29,000,000	8,700,000
Total	$145,000,000	$26,100,000

The following table will show the sums necessary to be raised in each year. The first column shows the years of the war; the second, the ordinary revenue, agreeably to the calculation of the Secretary of the Treasury; the third, the new taxes to pay the interest of war loans; the fourth the total.

First yr. of war,	$7,000,000	$1,740,000	$8,740,000
Second do.	7,000,000	3,480,000	10,480,000
Third do.	7,000,000	5,220,000	12,220,000
Fourth do.	7,000,000	6,960,000	13,960,000
Fifth do.	7,000,000	8,700,000	15,700,000
Total	$35,000,000	$26,100,000	$61,100,000

Thus, in five years of war, we are to pay twenty-five or twenty-six millions of new taxes as the interest of war loans, and incur a new debt of between one and two hundred millions of dollars. With such a prospect in view, can we afford to expend from three to four millions a year upon gunboats?

A still more striking view of the economy of this system may be taken. We have already a naval force, consisting of the frigates Constitution, United States, President, and Chesapeake, of 44 guns each—176 guns. Frigates Constellation, Congress, and New York, of 36 guns each—108 guns. Frigates, Essex, Adams, and John Adams, of 32 guns each—92 guns. Ship Wasp, and brigs Hornet, Argus, and Siren, of 16 guns each—64 guns. Brig Vixen, and schooners Nautilus and Enterprise, of 14 guns each, and Revenge of 12 guns—54 guns. Ketches, Spitfire, Vengeance, Etna, and Vesuvius; the two former of 7, and the latter of 11 each—36. Total, 534 guns. A year or two ago, in consequence of a motion made by myself, the Secretary of the Navy laid before the House an estimate of the expense of supporting the whole of this armament in actual service. I think he calculated the amount at about a million and a half of dollars. I have not much confidence in such

estimates, but will venture to suppose that the Secretary was not more than a million of dollars out of the way. The real expense, then, would not exceed two millions and a half of dollars. Thus, we could keep in service a respectable and very efficient Navy of 534 guns for about half the sum that this weak and wretched flotilla of only 257 guns (less than half the number) will cost for the first year, and for less, by several hundred thousand dollars, than the expense of it in any subsequent year. Let us hear no more of the economy of the gunboat system.

But it is a popular system—the people are in favor of it—and this is an overwhelming answer to every argument that can be urged against it.

With whom is it popular? Certainly not with the people in the Northern States, for a very great majority of them are opposed to it. Within two or three years we have received addresses from the Legislature of New York and Rhode Island, passed, I believe unanimously in both States, in favor of an enlarged and more efficient system of naval defence. Those two States, of course, may be considered as opposed to this project. No one will set down Connecticut as friendly to gunboats. Is it popular in Massachusetts? One gentleman from that State (Mr. BACON) protests against being considered as the Representative of a people hostile to this mode of defence. But that gentleman will not tell us that a very large majority of his constituents are attached to the system, or that, among those who are, one in fifty has any practical or even historical information upon the subject. Are your constituents, Mr. Speaker, in favor of this mode of defence? I presume not. When, two or three years ago, you opposed this establishment in its infancy, you undoubtedly represented their sentiments and feelings, as most certainly you supported their true interest. The Representatives from New Hampshire, and others from the Eastern States, ask you to excuse them from accepting their proportion of these boats, and to give them a few frigates in exchange. You refuse their request.—They ask for frigates, and you give them gunboats. As it respects my own constituents, I have not been able to find any gunboat men among them. It is probable, however, that there are some, as there may be men in that quarter, as in others, willing to believe whatever the Executive believes; but I trust there are fewer of these miserable minions in that district than in some others in the Union. Here I cannot help remarking upon a singular expression of a gentleman from North Carolina (Mr. SAWYER)—that most honorable quarter, the North—used ironically, as we may presume, from his manner, in allusion to an observation, perhaps inadvertent, perhaps deliberate, of a gentleman from New Hampshire (Mr. DURELL) that he had the honor to come from the North. The people of the North, sir, are certainly an honest people, no more so than those of the South; but as honorable a people as God was ever pleased to make. They know, they feel, that they have not their due weight in this Union; that their interest is improperly neglected by the present Administration; but they are sincerely attached to the Government of their country. They are men, high-minded men, who know their rights, and knowing dare maintain them. To return to the subject. Suppose this despicable system of defence to be popular. Whence does its popularity originate? From what quarter came the original proposition? *Ex quo fonte?* From what foundation has descended this copious and overwhelming torrent of national delusion, degradation, and destruction? The answer is not difficult. Some years ago a strange passion for gunboats seized upon one of the great Departments of the Government. Who believes that even ten men in the United States would ever have raised their voices in favor of this plan of protection, had it not been understood to be a favorite Executive measure? But I shall be told, that this is inconsistent with the assertion that the President has not recommended it. I have proved, however, by his own documents, that it is his own measure. Every one knows the fact. It is true that he recommends nothing at present. He talks of a moveable force upon the water. This is very clear to some; but, in my view, never was Grecian oracle more inscrutable, more inexplicable, more irresponsible. But what course does the thing take? A committee is appointed to inquire what the Executive wishes. One of his Secretaries tells them that "it is believed, that, for the protection of our ports and harbors, there ought to be built 188 additional gunboats." Why does not the Secretary give us the grounds of this belief? Why not communicate some information upon the subject? Why not undertake to show the utility of a plan of defence, for which he asks us to appropriate millions? But by whom is it believed? Do we legislate, do we vote away five millions of the people's money, upon the belief of the Secretary of the Navy? Certainly not. It is but little less disgraceful, however, to do it upon the belief of the President. We all know that this business has long been cut and dried by the Executive; you have long had upon your tables even the Executive apportionment, to every port, bay, and inlet on your coast, of these weak, wretched, contemptible gunboats; and this before it had been intimated to you that an appropriation of money was wanted for the purpose. I do not understand, or rather I understand too well, this mode of legislation in a Republican Government. It is miserable management, despicable legislation! If we are sent here to carry into effect the will and the wishes of the President, let him express that will and those wishes in the Constitutional way, and not in a secret side-way manner, through the intervention of Secretaries and committees.

It may be proper again to remark, that this is but a new edition of the proclamation and gunboat system, which has reduced the Republic almost to the lowest point of degradation and disgrace. Every page of our recent annals affords some melancholy evidence of the fact. The President issues a proclamation, forbidding certain British armed vessels to come within the waters of the United States. Disregarding the procla-

mation, one of those vessels enters one of our harbors. One of our officers sends the commander notice of the proclamation, and an order to depart. The British officer answers, that the proclamation of the President would disgrace the most petty Power of Barbary, and is worthy only of the bloody reign of a Robespierre; and that he shall consult his own convenience in the case. What course is then pursued by the American commander? He sends an express seven hundred miles to inform the President that he has received a most extraordinary letter, which he knows not how to answer, and asks for further instructions from the Government. The interdicted vessel continues within your jurisdiction in defiance of the whole power of the nation. Is this the boasted energy and efficacy of the proclamation and gunboat system? If so, its annihilation ought to be most anxiously desired. I am astonished to behold so many gentlemen, who detest this system, support it with their votes. A gentleman from New York (Mr. GARDENIER) to whom I always listen with pleasure and often with improvement, assures us that he has no faith in the scheme, that he has often laughed at it, and yet he will vote for it! The Executive wishes it, and he is willing the experiment should be made. But is it right for us to vote away the people's money by millions upon experiments which we know to be vain and delusive? Can it be consistent with our duty, on the eve of war, when some gentlemen say we are actually in a state of war, to squander the treasure of a nation in such a manner and upon such objects, to gratify the unaccountable passion or whim of the Executive for a species of naval machinery, which, probably, has not a solitary advocate in the Union, who does not borrow his impressions upon the subject from that Executive? Shall we thus add the weight of our voices to that thunder which denounces every man of genius, talent, and independence, who refuses to subscribe to the Executive or popular dogmas of this disastrous moment? While the storm of war comes roaring over the Atlantic, the angry demon of denunciation howls within our own borders! The wretched system of the Government, however pure may be its motives, tends to cherish party spirit, when it should not be known in the land; and to persecute and proscribe genius and talent, when genius and talent alone can save both the Government and the nation from ruin. The time must come, it must and will come, when the talents and integrity of our country must be combined. Not to save the people from themselves, I am not an advocate for that doctrine, but to save the Republic from discord and destruction. It is one of the political dogmas of the present period that he that doubteth is damned; that he who does not believe in the absolute perfection of the present Administration is guilty of the worst of all political heresies. I have never been a subscriber to this confession of political faith. And I will soon give a pledge of the sincerity of my attachment to Republican principles, in which it is not probable that I shall find a single imitator in the Union. I will retire from this station, and I shall retire rich in the confidence of those who have so long confided in me; and from that moment I will never consent to receive the suffrages of any portion of the people for any office in their power to bestow. Malice, and I will never affect to be totally insensible to its cruel lacerations, will attempt to trace conduct of this kind to the source of disappointment. But the effort will be in vain. I entered into public life under circumstances which precluded the possibility of disappointment. I entered it with a determination never to wait for one moment in the ante-chambers of the Presidential palace; never to solicit or cause to be solicited for myself a single favor from the Executive Department of the Government. This is a determination which, in my opinion, every representative of the people ought to form; and, in my own case, it has rendered it impossible for me, so far as respects the Executive, to have been personally disappointed.

In an Administration, thus patronising weak men and measures, thus destitute of the energy and talent which the times require, it is impossible for me to repose great confidence; and as conscience will compel me to make this declaration to every one of my constituents, it may as well be made at once in the presence of my country and the world. When this miserable and futile scheme of gunboats is substituted for that great and glorious system of national defence which the crisis demands, who can believe the Government an able and a wise one? Hailing the day which first smiles upon me as a private citizen, free from the toils, the perplexities, and the calumnies of public life, as the happiest of my existence, and abandoning for ever the field of political ambition, my opinions will be of little consequence to the Government or my fellow-citizens. But to the Government of this nation the attachment of the Northern people will always be of immense importance. They are anxious to support the national honor, but they love and are anxious to preserve peace; and in their name I will vepture to protest against any measures calculated to plunge them into the horrors of war upon mere points of etiquette. If we can obtain substantial satisfaction for the great outrage which the nation has sustained, we will not refuse it because other and older subjects of dispute remain unadjusted. If we can obtain the desired dish of reparation, we will not go to war because it is presented to us in a silver bowl instead of a golden one. If the conduct of the Government shall be just and wise, we shall continue to support it; if it shall improperly involve us in the miseries of war, it will inevitably lose our confidence. If, "in the full tide of successful experiment," it shall devote to persecution and proscription the patriotism and wisdom of the nation, it will no longer receive the support of an enlightened and virtuous people.

To have spoken thus long has required an effort far beyond my strength. One part of the remarks which I intended to make must be suspended. The description of certain politicians to whose disastrous influence upon our concerns I alluded

at the outset, would be a task as ungrateful as it is unnecessary. A sense of duty alone has till this time kept me from my seat. In resuming it, I again protest, in the name of the people whom I represent, against a worse than wanton waste of the public treasure, for a worse than useless object.

Mr. SLOAN said, he did not rise to illustrate this subject, after the long discourse of the gentleman who had just sat down, (Mr. ELLIOT,) nor should he presume to follow him through his almost superhuman flights. When the gentleman first began, Mr. S. listened with attention and a great degree of solemnity, to what appeared to be a political funeral sermon. He attempted to follow the gentleman's course, but, alas! said Mr. S., he ascended so far beyond the reach of my feeble optics, that I was under the necessity of dropping down into my humble seat. Whether he returned to his proper atmosphere, Mr. S. could not exactly say, for if he did, his voice had become so feeble, that it could not be heard. Mr. S. would not enlarge upon the subject, but barely say that, after waiting so long in suspense, from all he could discover of the gentleman's meaning, he was convinced that the difference of opinion between him and that gentleman must be as great as the difference between "the mole's dim curtain and the lynx's beam." In order to discover, said Mr. S., whether the gentleman's very eloquent and elaborate speech was as much beyond the comprehension of others as it transcended my understanding, I know no better way than to call for the yeas and nays on this important question.

Mr. FISK said, he did not rise to enter into the discussion at this time, but to answer an observation of his colleague, to the purport, that the confidence of the people of Vermont was withdrawn from the Executive. Mr. F. said, so far as he knew their opinion, they had perfect confidence in the Government, and would have as long as it should be continued to be administered in the same wise manner as had always been pursued by their present Chief Magistrate.

Mr. DANA observed that, from some things which had been said, he, perhaps, ought to be admonished, and relinquish his right of speaking; but, as he had not yet become so humble as tamely to give up a right which he possessed, he would take the liberty to make a few observations.

The question he understood to be a bill from the Senate, appropriating a sum of money for the construction of an additional number of gunboats. It had not been printed for that House, but, as he understood its intention, it was to give the President a certain limited discretionary power, to cause money to be expended. It was not an act by which the President could be obliged to make the expenditure, but an authority to make it, which he might or might not exercise, as he judged the public interest required. The question was not, should one hundred and eighty-eight gunboats be, at all events built, but should the President be armed with a discretion to build, if he was of opinion the public interest required it. If, then, members were not satisfied that the number of gunboats already built are adequate to that species of service required of them, they would be in favor of building others.

What was the situation of the Legislature at that time? In respect to foreign relations they had not the necessary information to enable them to judge so well as could be wished. That House had not in its possession any despatches relative to the affair between the Chesapeake and Leopard. There had not been laid before them any general system of defence, nor had they been told the probable issue of the negotiations with England. In all points they were in the dark. It was a well known provision in the Constitution, that the President should give to Congress information of the state of the Union, and recommend to them the adoption of such measures as he deemed expedient; and it must be well known to every member, that it was all in vain to think of attacking, when the chief did not direct the mode of attack. It would be perfectly in vain to provide means of defence which the Executive would not think proper to use. What had the President recommended? He was known to them as Commander-in-Chief, and to him belonged the right of directing the public force. What, then, did the Commander-in-Chief require? What was that force for which he was willing to pledge his responsibility? No other than gunboats. At the last session, in a Message to the House on that subject, he had explicitly recommended them. They were also understood to have been recommended to the present session, though not in such explicit terms. As President, as Commander-in-Chief of the national force, he desires to be furnished with gunboats, as a means of defending the nation. He requires nothing more. Amid all the anxiety, agitation, and alarm into which the country had been thrown, gunboats were asked for as the principal means of defence. It was all, in point of force, which the President required for taking satisfaction for the wrongs committed against the country. In this situation, what was the duty of the House? Considering the President as highly responsible in regard to our foreign relations, would the House refuse to him the means of defence for which he applied? If, indeed, all that had been said about the public danger was illusory—mere tales, to sport with the public feeling, there would be no need for any mode of defence. But, when these things were represented in earnest, would the House refuse to the Executive such means of defence as he required for the public safety, or would they press on him other modes of defence, which he thought perfectly useless? It appeared to him the most correct course to vote for the bill, especially as it only gave a discretion as to the build, and was not a positive order to build.

He would readily acknowledge that gunboats would be of great use in defending certain portions of the territory. At the mouth of the Mississippi they might be peculiarly so; for there no troops could be landed, no batteries erected, nor could vessels of heavy burden pass up, there being no more than two-and-a-half fathoms water on

the bar at its mouth. They would also be useful in narrow rivers; at long shot, especially where the shot could have the whole range of the vessel's deck, on coasts abounding in shoals, and in narrow passages. He, therefore, felt it his duty to vote for as great an amount of this kind of armament as was judged necessary for the defence of that portion of the country where they promised to be efficacious. But when they passed north of the Hudson, did gentlemen then talk of gunboats for defence? They must have forgotten for what these things were intended. To be useful, they must be navigated by skilful officers and skilful seamen, but no skill was ever acquired on board of gunboats—men must go elsewhere to acquire skill. Their real use was as an auxiliary force, of subordinate character; and in this character, with the aid of other naval armaments, they would be useful.

When your officers and soldiers behaved so gallantly before Tripoli, did those men live in gunboats, or did they reside on board of vessels of larger force, and only act occasionally on board gunboats? Did gentlemen talk of that affair proving the utility of gunboats? Tripoli had gunboats, and why did they not defend the place? Ask the superior skill and bravery of your officers and seamen. Gunboats were useful in that affair merely as they served to bring brave men in close conflict with their enemy.

With respect to the use of gunboats, we have been reminded of the result of a contest between the Russians and Turks in the year 1788. In that case, the victory of the Russians over the Turks did not principally arise from the superiority of gunboats over ships-of-the-line and frigates. It was a victory of science and refinement over ignorance and barbarism. What has been styled the Liman sea is a marshy lake, near the mouth of the ancient Boristhenes, now called the Dnieper. As far as I have been able to ascertain the fact, that lake, in its greatest breadth, is not so broad as the narrowest part of the Chesapeake Bay between the Capes and the Potomac. Below the confluence, with the Dnieper, of the river Bog, anciently called the Hyperis, there is a considerable expanse of water, which is variously denominated. It is sometimes called the Liman, a Russian term, which denotes a marshy lake, sometimes the bay of Kinburn, sometimes the estuary of the Dnieper. The navigation is difficult at all times, and it is particularly dangerous to bad seamen, from the number of shoals, the narrowness of channels, and the variety of currents. The Turks, although long in possession of it, were ignorant as to that navigation. The Russian flotilla had a commander of distinguished gallantry and skill, with experienced seamen, veteran soldiers, and a tremendous artillery.

It was not from choice that the Russians used gunboats rather than large vessels against the Turks. The Russian fleet of large ships could not be sent round from the Baltic through the Straits of Gibraltar, and up the Mediterranean, as early as was desired for securing the Russian fortress of Kinburn. Galleys, gunboats, and various descriptions of light vessels were prepared on the Dnieper. The fortress of Kinburn stood on the left bank of the Dnieper, near its entrance into the Black Sea. And the Russian flotilla was stationed near the shore in an advantageous position where they were, in a great measure, covered by the cannon of the fortress.

The Turks had ships-of-the-line, frigates, and smaller vessels; and were commanded by the Captain Pacha or High Admiral, Hassan Ali, who had distinguished himself against some revolting Beys and Mamelukes in Egypt, where impetuous valor principally decided the contest. But the Turkish commander, although successful against the Egyptian revolters could not prevail against the Prince of Nassau, who commanded the Russians.

One great object of the Turkish fleet was the fortress of Kinburn, which was particularly important to the Russians for holding possession of the Crimea or Tauric Chersonesess, so much regarded by the Russian Government.

There were three engagements between the Turks and Russians in the bay of Kinburn. In the first instance the Turkish commander employed his smaller vessels, amounting to fifty-seven in attacking the Prince of Nassau with twenty-seven sail. The Turkish assailants were repulsed.

Afterward, Hassan Ali, impatient of defeat, entered the Liman with his principal fleet, regardless of the shallowness of the navigation; but, in the meantime, the Prince of Nassau had received a reinforcement of twenty-two vessels with one gun each. A Turkish ship-of-the-line was soon aground, assailed on all sides, and blown up. A similar fate attended the Admiral's ship of the Captain Pacha. Ignorance of the navigation, inferiority in seamanship, want of skill in the management of artillery, exposed the Turks, with their impetuosity and ideas of fatalism, to be defeated by the superior skill and management on the part of the Russians.

The next morning several more of the Turkish ships were found stranded, and a battle ensued which continued for more than four hours. The Turks were defeated, and their commander, immediately after the action, abandoned the enterprise, and sailed from the Dneiper.

In voting for the bill on the table, he would not be understood to say that he thought other means of defence unnecessary. He disclaimed the idea. Gunboats would be found altogether useless in the northern waters, and he could not, for a moment, suppose the people solicitous for a mode of defence which must, upon experiment, prove altogether nugatory. As to their safety, he was not disposed to say much on the subject. It might, however, be recollected, that a number of these boats, not exceeding ten, had sailed for the Mediterranean in the most favorable season of the year, and that one of them was lost. This was not a very strong proof of their safety.

The opinion of naval gentlemen had been introduced to show the efficacy of gunboats. What was the opinion of Captain Decatur on this sub-

ject? In his letter to the Secretary of the Navy, he expresses his hope that, if any other kind of naval force was employed, he would not be kept on board a gunboat. This was as strong language as an officer of honor and sensibility could use to his Government, and was sufficient to show that he had but little confidence in the efficacy of gunboats.

He wished he could see some additional mode of defence proposed. Gentlemen had told them they would meet it fairly, when it was proposed. He preferred having a view of the whole system of defence at once, not, however, that he doubted the candor of gentlemen.

Mr. NICHOLAS said, this bill was objected to yesterday because the system which it was intended to embrace would not afford protection to commerce. It appeared, upon the very face of the bill, that it was not intended to accomplish the protection of commerce. To-day, the bill was objected to, because gunboats alone were not an adequate mode of defence. Had it ever been said that they were? For himself, Mr. N. said, that if this was all the preparation they intended to make, no man would scout the idea with more indignation than himself. Was there any man who believed that they were so lost to a sense of duty as to rest the defence of the nation on gunboats alone? No man could believe it.

The gentleman from Connecticut, and other gentlemen who had spoken on the subject, had acknowledged that they considered gunboats in some situations as a valuable, peculiarly valuable, species of defensive force. An attempt had also been made to convert this into a local question. Was it so? If it was, when his residence was known, and the situation of the great bulk of the State of which he was a Representative, no man would believe that he should vote for it on local consideration.

There was one observation on the nature of this means of defence which Mr. N. had not heard made. He considered gunboats as a mode of defence, of which the United States could immediately possess themselves; ships of war might be years on the stocks: gunboats might be built immediately in every port of the United States; it was impossible to say how long it might take to procure ships of war and make them ready for service.

From what Mr. N. had heard, he believed that gunboats would be an effectual defence for the port of Boston. The gentlemen from New York, who were so much alive to the safety of their city, had not requested that they might not have gunboats for the defence of that city. No gentleman had disclaimed gunboats for their defence; it had said that they were not alone an effectual defence.

Complaints had been made that the President of the United States had not recommended to the House the adoption of particular measures. Had the President attempted to direct the Congress of the United States whither to turn their attention, it would have been rung through the nation that they were mere scriveners appointed to register his edicts. Mr. N. would not undertake to say what was most proper for the President to have done, but he would say, that it was more respectful to the nation and to the House that they should be left with a certain discretion and to act on a certain responsibility. In our present situation, the Constitution had placed the power of making provision for defence, not in the Executive but in the Representatives of the nation. Did it become the President of the United States to recommend to them to make war or to take war measures? When the President of the United States had given to Congress all the information which he possessed, he had done his duty; and they ought not to hesitate a moment in providing means of defence. He thought he had understood the gentleman from Connecticut to say, that no measures had been recommended by the President, except gunboats, and therefore he should vote for them. Mr. N. said, he had looked at the Message from the President of the United States, and could not see any express recommendation of that measure, more than of raising an army, or any other defensive preparation.

Mr. N. believed the gentleman from Connecticut had said that there were no despatches before the House relative to our differences with—[Mr. DANA explained that those were not his words: he had said, the House were not in possession of a copy of any despatches relative to the affair between the Chesapeake and the Leopard.] Mr. N. said, he presumed he had misunderstood the gentleman: on that subject, however, Mr. N. was about to have said, that from any publications which had been seen in this country, all the papers which were in possession of the Executive had been before them; because they had seen the documents relative to the negotiation throughout, to its conclusion.

Mr. THOMAS said, the gentleman from Connecticut (Mr. DANA) had stated that the President had recommended gunboats, and that this was the only means of defence which he had recommended, and he referred to a Message of the President, sent to that House at the last session, to prove the truth of this position. Mr. T. said he wished the Clerk to read the first paragraph of that Message; it would completely contradict the assertion of that gentleman. Mr. T. said the gentleman from Vermont (Mr. ELLIOT) had also hung the most of his speech upon the same position.

The Clerk then read the following paragraph from the Message alluded to:

"Under present circumstances, and governed by the intention of the Legislature, as manifested by their annual appropriations of money for the purposes of defence—1st: land batteries furnished with heavy cannon and mortars, and established at all the points around the place favorable for preventing vessels lying before it; 2d, moveable artillery, which may be carried, as occasion may require, to points unprovided with fixed batteries; 3d floating batteries; and 4th gunboats, which may co-operate with the batteries for his expulsion

Mr. DANA said, that gentlemen seemed very

anxious to disprove the fact that the President had recommended gunboats. The reason why Mr. D. voted for them was, that the President of the United States had recommended them, and relied upon them chiefly for defence, and because it was the first defensive measure for which money had been called for. Mr. D. did not say that the President did not give them as much information as he ought, or that he did not give them as much direction or leave them as much discretion as was necessary. Mr. D. said he spoke merely of the limited information, and few recommendations, given to the House. He considered the President as Commander-in-Chief, and because he had recommended this measure, with such a broad view of the whole ground as he must have possessed of all the means of information, with the assistance of all the talents of the Heads of Departments, Mr. D. was called upon to vote for this bill. Mr. D. did not say whether the recommendation had been made at this session or any other; he only meant that the general course of proceeding implied an approbation of that mode. What was the tenor of the whole course of communication between the House and the Navy Department? Whether weakly or wisely. Mr. D. said was not the question, but, what was the fact as to official communication? With all the opportunities of knowledge and information which the Executive officers must possess, it was their opinion that gunboats formed an eligible part of a permanent system of defence: and this would influence Mr. D.'s vote on this occasion.

Mr. WILBOUR said the gentleman from Vermont (Mr. ELLIOT) had told the House that the State of Rhode Island did not want such defence as gunboats would afford. Mr. W. said he would inform the gentleman, that he had the honor to represent that State in part, and that he should vote for this bill, because he believed gunboats were the only floating defence proper to be erected.

Mr. COOK said he was not opposed to the gunboats, he voted for an increase of their number at the last session; he was now in favor of increasing the number, and should vote for this bill; though he had rather a smaller number had been authorized, to allow a greater proportion of other modes of defence. He was only opposed to them when considered as of themselves forming an entire system of defence: when proposed only as a part of a system he was in favor of them. He would meet gentlemen who were in favor of the gunboat system, and vote for as many as should be necessary for the protection of the Southern waters, and would vote for the whole number proposed by the bill in that point of view, hoping they would be as well disposed to accommodate him when other modes of defence came under consideration.

Mr. RANDOLPH hoped, before this question was decided, that they should understand something about it. He had been waiting with great impatience for some information on the subject; and after all the debate which had taken place, he was now as well informed as when he first arrived at the House. He hoped the gentleman who had introduced the bill, or some other gentleman, would inform them to what extent the appropriation in the bill would diminish the regular expense of our Naval Establishment? He merely wished for information.

Mr. BURWELL said, he had not intended again to address the House upon this subject, but as his colleague had called on some member of the committee, before whom this bill had been discussed, for explanations, he would candidly state his own views as to the policy of naval armaments by the United States. If the United States should be involved, unfortunately, in a war with Great Britain, in defence of just rights and essential interests, he had never contemplated the creation of a naval force to protect our commerce on the ocean against that nation; he thought the fruitless efforts of France, Spain and the Northern Powers to resist the navy of England afforded an instructive lesson to this nation, and plainly pointed out what was its policy. We should, said he, confine our efforts to objects which we could accomplish; the first of which would be to give complete protection to our ports and harbors, to points most vulnerable by the enemy, and the property of our people most accessible to his naval expeditions, and most tempting by its value to his rapacity. They should be prepared to expel the enemy the moment he touched our ground. This policy would be consistent with our resources; for it should be recollected the instant the war commenced, our revenue, derived entirely from imposts and duties, would nearly cease, and could only be supplied by internal taxes, which existing circumstances would render almost impossible to collect; because the produce of the country from which money must be raised, would be of little value. A naval war with Great Britain at a time when our revenue was ruined, would at its termination leave the nation encumbered with a debt which they should sedulously avoid contracting. Mr. B. said, he felt no desire to see this country in possession of a navy sufficient to combat with that Power; the whole United States if sold at public auction, admitting that there were bidders able to purchase, would not defray the expense of erecting and maintaining the enormous establishment. He verily believed the possession of a navy would ere this have involved us in war with England, who would have treated us as she has Denmark, and taken possession of it in an "amicable way." It was by different means we should operate upon Great Britain and bring her to terms of justice; it would be by annoying her commerce with our privateers, expelling her from the continent, and seizing on her Canadian possessions, holding them as guarantees for indemnity, at a future pacification; by withholding provisions from her colonies in the West Indies, and raw materials from her manufacturers in Europe, and by forbidding the consumption of her manufactures in this country, their most profitable market. He was very much misinformed if this mode of attack would not prove more effectual than contending with a navy which has baffled the world, and swept from the sea the com-

merce and ships of every nation; if this system did not answer, he readily confessed, we were unable to cope with a nation whose naval resources were infinitely beyond those of our infant country. It would require all the patriotism of the people to sustain the privations of a war with England; he had no idea that the country would be invaded, or its safety endangered, and he therefore felt confident the nation would submit to inconveniences, though great, much less than the calamities of war waged in any other form.

Mr. B. said, gentlemen in discussing this subject had ridiculed gunboats, and relied upon large ships to protect our ports and harbors; let us suppose, said he, that there were four forty-four gun ships, or a larger number, lying in the port of New York, of what avail would they be in defending the towns of the United States? While they were pinioned in port, what would prevent the British from laying every town on the seacoast under contribution? Any naval force the United States could build, would be useless so long as England could bring a greater force against it. It appeared to him that gunboats were preferable to ships-of-the-line, for the protection of our harbors, because they might be moved, and collected without danger, at a given point, to co-operate with one another. They can always pass between the shore and the anchorage ground of a squadron, and escape to the place of destination, secure on our shallow coast, so inaccessible to ships of force. Mr. B. said, all gentlemen who had spoken upon this subject seemed impressed with the propriety of using gunboats as auxiliary to land batteries in defence of our ports and harbors. The only question, then, was the number adequate to that object.

He was in favor of the number proposed by the bill, because some of our most skilful naval officers who had been consulted, and who had devoted much thought upon the subject, believed this number was requisite to preserve our seaport towns from conflagration, and enforce effectually the laws in our own ports. He offered this reason as an answer to the gentleman from New Hampshire, (Mr. GARDNER) who had demanded why he adhered to the particular number in the bill.

As to the origin of gunboats, he could not speak with much confidence; but it was well known they had been used by all the nations in Europe. The French, Spanish, Dutch, Italians, and the Barbary Powers, had all found them excellent floating batteries, capable of opposing the most formidable resistance to an approaching squadron, England herself, with her present navy, has at least three hundred gunboats, employed for the protection of her ports and harbors. He said he was pleased with the gentleman from North Carolina (Mr. SAWYER) who spoke yesterday, and had then shown the particular advantages of gunboats; he would not again recapitulate them, as the House, he was convinced, had given them their just weight. Their introduction into the United States has been in consequence of the recommendation of Commodore Rodgers and the officers of our navy, who had served in the Mediterranean, and witnessed their efficacy as engines of defence.

It had been objected to gunboats that they cost too much in building. Mr. R. said the present price of each was $5,000, a sum considerably less than their cost when first contracted for. If the House judged from the frigates which had been built they might reasonably suppose the price would be more reduced as the workmen became more experienced, and the materials, for constructing, are brought in greater abundance to market. But it should be taken into view, that those gunboats already constructed were larger and more costly than necessary; they were good seaboats. It had been proper to build them fit for sea, because, having only a few, it was frequently necessary to concentrate them at a particular point. The number being now augmented, and enough assigned for each harbor, the necessity for constructing them at the present price ceased. Mr. B. said he had been informed, that the gunboats used by the Spaniards were much smaller and cheaper than those belonging to the United States.

Another objection had been made to the expense of maintaining them in service. The sum necessary for this purpose was estimated by the Secretary of the Navy at $11,000 annually, upon the supposition they should have their full complement of men on board during the whole year. Mr. B. said this sum would never be requisite, since it was well known not more than eight men would be employed except while in actual service; the expense therefore could not exceed one third of the annual estimate.

In the building and repairs of gunboats, they would be found upon calculation precisely equal to the same number of guns, in frigates and ships-of-the-line. The only inequality of expense was in their manning. Mr. B. said he was authorized to state that the committee were about devising a plan by which the gunboats could be manned in the different seaports by requisitions of the seamen and others in port, whenever their services may be required. This would obviate the necessity of their being constantly manned. If gentlemen would examine the places at which they are to be stationed, they would find their population respectively would be quite sufficient for this purpose; at Norfolk, for example, there are to be sixty; and certainly, from a population of twelve or fourteen thousand inhabitants, men could at all times be procured. In the same manner at New York and other places. Gentlemen dislike the manner in which they were stationed, and laughed at the idea of one or two boats defending a port. Mr. B. said they were not to be permanently fixed at any place, but to be removed as occasions might require; those on the Potomac for instance, though assigned to specific points, would be concentrated, to suit emergencies; and thus the whole could be used in defence of a place to which the smallest number had been assigned.

Some gentlemen who had spoken appeared to place great reliance on large ships of war, to defend our towns and harbors. Had the capture of

Copenhagen been forgotten? It had been yesterday remarked that the Danish fleet did not protect it, though there were in port at the time of the assault eighteen ships-of-the-line, besides frigates and smaller vessels. In the year 1762, Mr. B. said, the British attacked the Havana; it was taken, together with twelve sail-of-the line, although defended by the strongest fortress in the world. The fact was, so far from yielding protection, ships of war could only be themselves secured by the most impregnable fortifications. Yet the House was pressed to build ships-of-the-line, when it was evident they would fall into the hands of the British, increase the navy of our enemy, and serve as an inducement to commit aggressions on our country.

Mr. B. observed he had listened with astonishment to the gentleman from Connecticut, (Mr. Dana,) whose speech was partly in favor, and partly against the bill. He had told the House that this was the only measure of defence upon which the nation was to rely for protection. Did he not know that there were bills before the House to erect fortifications, to increase the Military Establishment, and to arm the militia? Did he not know that one hundred thousand men had been put in requisition by the Executive? Had the gentleman forgotten his own proposition laid on the table yesterday, which he then called a measure of defence, to enable the merchants to arm and convoy their vessels for mutual security?

Mr. B. said he would appeal to the House, if this mode of discussion was candid. But the gentleman had given them a long argument to prove that gunboats are useless and unnecessary, notwithstanding he intended to vote for them. So far from imitating that gentleman, if he thought them unfit for the purpose of defence, Mr. B. said he would not only oppose the present bill, but he would vote against any number which should be proposed. Mr. B. said he would conclude his remarks, after noticing one observation which had been repeatedly urged to the House. It was regarding the source from which gunboats had been recommended. It was the Constitutional duty of the Executive to call the attention of the Legislature to this or any other mode of defence deemed necessary; he readily agreed it would be highly improper to adopt it merely because it had been thus recommended, but it would be equally so to oppose it for the same reason, without regard to the intrinsic merit of the plan; which consideration should alone influence the House, who were bound to consult the public good.

Mr. Upham said, since so great a number was necessary for effectual defence he should vote for it; he would rather too large a number should be built, than a number that would prove too small. He was of opinion with the gentleman from Connecticut, that, as these had been recommended by the Executive, they should be authorized. He was also in favor of this bill on another ground; because he hoped that gentlemen who were in favor of gunboats would be liberal in their appropriations for fortifications and batteries, when they came under consideration; and because many gentlemen, while in favor of gunboats, had given the House to understand, and others had insinuated, that when the subject came properly before the House, they should vote for frigates. He hoped, at this perilous crisis, when the nation was on the eve of a war, that they should seriously prepare for it, and agree to combine a certain number of gunboats with sufficient fortifications for effectual protection. How much money was in the Treasury Mr. U. did not know, but he hoped they would now magnanimously prepare for war; there was money in the country and men too. He was not desirous of critically inquiring how many dollars could be spent at this time without too much exhausting the Treasury; and as gentlemen appeared to be disposed to make war-speeches, he hoped when they heard the small still voice of the question for a liberal sum of money for defensive operations, they would vote affirmatively on it, without hesitation.

Mr. U. thought, before this could become a great nation at home or abroad, that they should have a large Navy; there could be no such thing as taking a commanding ground without a navy. It might not be necessary while our vessels continued within our own shoal waters; but the moment they left our rivers a navy was necessary. What signified the safety of an individual within his own house, if, when he left it, he was at the mercy of any one who chose to assault him? The United States had as much right to travel over the globe as any other nation; but they were not independent till they had a navy to defend themselves wherever they choose to go. This nation must depend upon itself. An individual might as well in civil society depend upon the ties of moral law upon individuals, as one nation could depend upon the justice and forbearance of another; he believed "the original sin and depravity of our nature" required every nation to erect a defence of this kind. One nation would receive respect from another so long as she could command it, and no longer. Perhaps this was not the time suddenly to erect such a navy; but they might proceed gradually, from year to year, till a navy sufficiently large was erected.

However, as he proposed when he began not to take up much of their time, he would not trespass upon it farther. He should vote for this bill, not because he was in love with this particular species of defence, though it might be a necessary part of a system; but as they might have no other, and it was necessary to have some, upon the whole view of the subject, he should vote for the bill.

Mr. Van Dyke should not have risen on this occasion, had not the yeas and nays been called; but he felt it his duty to state the reasons on which he should give his vote. He had listened with much attention to acquire that correct information on the subject which would have enabled him to discharge the duty which he owed to his constituents; but he found that he should at last be compelled to give his vote without that information which he was solicitous to obtain. He had not been able to ascertain whether it was the wish of the Executive, decidedly expressed, that such a bill

as this should be passed: he had perused with much attention the Message of the President of the United States delivered to Congress, submitted to the House before he took his seat on the floor, and when he examined that part of it relative to gunboats, he could not find a decided opinion on this subject expressed.

It might not be improper for him here to remark that despatches from abroad had now been received; and he had hoped, before they should have been called upon to give their vote upon this bill, that they should have been able to ascertain what was the opinion of the Executive. It was probable that some gentlemen in the House, to whom the avenues of Executive information were more open than to him, might be able to say what that opinion was; but, searching as he did, he had not been able to discover it. Perhaps he should not be wrong in voting for this as an Executive measure, because he saw an honorable gentleman acting so strenuously on this occasion, to whom he had been told gentlemen might look up for information of the Executive wishes. His own opinion originally had been, and now was, that such a system of defence should be adopted as the state of the nation should require.

The House had been told by some gentlemen that the nation was actually in a state of war; by others, that if not in a state of war, in such a situation that war was inevitable. The single question therefore now before the House was what was to be done in such a situation? Should they sit still there till it pleased the Executive department to come forward and tell them what they should do, or should they do that which they believed to be right? He was inclined to the latter course, to the discharge of his duty to the best of his ability: he knew that some mode of defence must be resorted to. He observed that there were on the files of the House several propositions for various defensive measures. But it was the opinion of gentlemen who had more opportunities than himself for acquiring correct information, that this was the most expeditious mode of defence; he should therefore consider it as an auxiliary mode of defence, and which the Executive thought most proper now to be adopted.

If he erred in sanctioning this measure by his vote, he should err on the right side, because it was a measure intended to place his country in a state of defence. He was not convinced that this would ever alone be that efficient defence which the country would require; he therefore had thought fit to express the grounds on which he voted.

Mr. RANDOLPH said that before this question was taken he begged to be indulged with stating as succinctly as he could the reasons which did not induce, but compelled him to vote against it. He was sorry that his colleague (Mr. BURWELL) who had undertaken to answer the question propounded by him had totally mistaken its meaning and object. He thought an explicit answer to it of material importance to a correct decision of that before the House. He had asked to what extent the appropriation proposed to be made for these boats would diminish the expense of the regular Naval Establishment?

[Mr. BLOUNT explained, that the Committee of Aggressions were appointed to consider on the means for the protection of our ports and harbors, and did not inquire into the propriety of an augmentation of the Naval force, or even the employment of that which the United States now possessed. They had considered gunboats and batteries as necessary for the defence of our ports and harbors, and had reported accordingly, without inquiring into the diminution or increase of the present naval expenses. That subject had been referred to another committee; and if gentlemen would turn to the report of the Committee of Aggressions, they would see that the measure at present contemplated was a part of a system. He could assure the gentleman from Virginia that the committee went into no inquiry to ascertain whether gunboats would diminish the ordinary expenses of the Navy Department or not; it was not their duty, neither were they at liberty to do it.]

Mr. R. regretted that he should be called upon to give his vote upon a measure concerning which in itself, and as affecting the establishment with which it was necessarily connected, of which it was an appendage, he was totally in the dark. This was not dumb legislation, but it was worse, it was blind legislation. Instead of having before them something like an exposition of the nature of this armament, some history or demonstration of its effects, some responsible person to take upon himself the consequences if it should fail, and fail he feared it would, they were called upon to vote in a state of profound ignorance by those whose information, upon this subject at least, was equally confined with their own. If the United States were in a situation different from that in which he deemed them to be, he might be induced to give up his opposition to this measure, and venture upon it merely by way of experiment, provided that he had something like a connected account of the machinery of this system. But this was no time to make ducks and drakes of their dollars, to waste them in mill-pond projects of childish amusement. It was a time when every spare shilling should be applied to objects of undisputed utility, and not to matters of mere speculation. And it was because he wished to see the sinews of war, arms and money, in possession of the United States, and to retain them there, that he was unwilling to join in the call to pipe all hands upon deck to start the whole Treasury of the United States into the holds of these frail and perishable barks. He did, upon his soul, believe that if the bill upon their table passed, they might whistle for the arming of the militia, and might give up all thought of seeing the country placed in a respectable posture of defence, within and without, from danger of whatsoever kind. It was for this, and he trusted in God there was in that House but one sentiment, to save the Republic, that he should vote against the measure. He should despise himself if he could vote against it from any other motive than a conviction of its public inutility. He wished to

see the nation armed, protected by a competent force—not so precarious and perishable in its nature—not a provision of sugar and salt, but of men and iron.

The chief argument of his colleague (Mr. BURWELL) who supported the bill was, that estimates of the expense of these boats were overcharged. He thought the experience of that gentleman in public life, though not so long as that of some others in the House, nor so long as Mr. R. hoped it would be, had yet been long enough to convince him that no reliance could be placed in the expectation of finding a naval estimate overcharged. If they were guided by past, and he might almost say uniform experience, they ought to calculate upon an excess of actual expense of fifty or sixty per cent. at least, beyond the estimate.

The same gentleman had said, if Mr. R. understood him correctly, if not he wished to be corrected, that gunboats had been tried in Europe and found a sufficient defence for ports and harbors there. But would any man compare the basins of Boulogne or Havre, scooped out by human hands, not bigger than an egg-shell in comparison, with the capacious bays and broad estuaries of this great continent? Did the gentleman know that the boats of which he spoke were first chained to each other and then chained to the shore, and that but for these fastenings the enemy would long since have carried them all off? Was this the sort of protection now contemplated? Was it proposed to haul the gunboats up into the Albany slip at New York, or at the county wharf at Norfolk, and chain them to the land? Why not plant the cannon on the wharf at once, and save the expense of the boats?

Mr. R. said, there was a case which stared them in the face, and which, to his surprise, no gentleman appeared to notice in the manner it deserved. This was the precise case of Algeziras, about which they had heard so much. Would any man contend that the passage of the Gut of Gibraltar was more easy than that of the Capes of Virginia—that it was wider? Or that the Chesapeake itself was less fitted for the action of ships of war than the Straits? And yet had they ever heard of an attempt made by these gunboats to stop a single British ship of war passing in or out of those Straits? And why had they not? Because they were incompetent to the object. During this long and bloody war the gunboats of Algeziras had never dared to contest the passage of these Straits with the enemy's ships-of-the-line. He wished, therefore, to know whether this force was to protect the Chesapeake, the Hudson, and other great waters of the United States, or whether they were to be drawn up above Craney island. Gentlemen had said that they wished to put the Government in possession of a force which would enable it to expel from our waters the ships of a foreign nation, which might contumaciously refuse obedience to our proclamations and laws. Have we not now, said Mr. R., a case precisely in point, demonstrating the insufficiency of gunboats to accomplish such an object. We had now seventy of these boats. A small British squadron had anchored within our waters; a proclamation had been issued commanding them to retire. In defiance of its authority they persisted in remaining within our jurisdiction. And yet these seventy gunboats, together with the whole naval force of the Union, even with *Decatur* at their head, were deemed insufficient to enforce the proclamation, and these ships yet rode triumphant. It was found that with all the Navy of the United States and all their gunboats into the bargain they could not maintain their authority within their own jurisdiction, and yet they were called upon to build more—something in the style of the physician in the comedy, who prescribes bleeding, and although at every operation the patient is visibly worse, has no resource but in a repetition of it. Sir, if seventy gunboats are insufficient to expel the squadron now lying in Lynnhaven bay, it is not seven hundred that will afford a shadow of defence for the long line of your seacoast. Mr. R. said that if, as appeared to be the case, the old Navy of the United States was to be abandoned (he did not mention this as an objection) why not convert them into gunboats, or block ships, mentioned by a gentleman from New York. But in answer to this he supposed his colleague (Mr. BURWELL) would tell him (and he would listen to him with pleasure) of the famous attack upon the Havana, in which the strongest fortress perhaps in the world, and twelve ships-of-the-line, was unable to cope with the forces under Lord Albemarle. If the gentleman's case proved anything, it proved that all systems of defence were good for nothing. If a narrow passage, such as that leading into the Havana, protected by the tremendous batteries of the Moro castle and a powerful fleet, could not be defended against the British navy, how could they expect to shut up a great bay, twenty-one miles across, with a few gunboats, or even to guard the Narrows at New York. At the Havana and at Carthagena, the Bocca Chica, as it was emphatically called, permitted but a single ship to pass at a time, and yet the entrance into both places had been forced and the first captured. His friend from Virginia would find it not less idle to attempt to contest the Chesapeake with these boats against ships-of-the-line, than to extend naval protection to our commerce in the Indian Ocean, which he had justly derided as a chimera.

Mr. R. recollected, not verbatim, but substantially, an expression of that Minister, whose character as a man and as a politician he held in higher reverence than any other upon record—the first, the great William Pitt. In the memorable war which he had directed against the whole House of Bourbon, with a glory that never has been equalled and never can be surpassed, that wonderful man, with a modesty peculiar to real greatness, ascribed the success of his enterprises, not to his own merit, but to the circumstance, that France, instead of confining herself to the continent of Europe, where her strength lay, had attempted the attack or defence of distant possessions, thus giving her enemy a prise upon her, of

which otherwise she could not have availed herself. In meeting Great Britain upon the ocean France laid bare her only vulnerable point, and was vanquished not more by the sagacity and prowess of her enemy, than by her own want of foresight. She had since seen her error, and what was the consequence? Abandoning her old system, and maintaining herself on her own element, the natural theatre of her power, she had become mistress of continental Europe, and perhaps whilst he was then speaking she was mistress of the world. Her former policy had led to the peace of 1763, which, humiliating as it was, far exceeded any that she had then a right to expect. The same course was now recommended to America, that she should launch into the water, and fight her enemy on her own terms. If able to contend on that element it would be time enough to prepare for it, when they had provided for the land; but in the name of Heaven, said Mr. R., let us take care of *terra firma* first.

When he rose to speak he had not intended to say half so much as he had done. Although he should give his solitary and inefficient vote against the measure, he should feel extremely happy if the experiment should prove that his objections to it were groundless, and that it should surpass the most sanguine expectations of its utility; as he should rejoice to find himself mistaken in any case in which the result should redound to the welfare of his country.

Mr. QUINCY said, that he had not intended to have taken any part in the debate on the bill. But, as he considered it as his duty to put his negative upon it; and, as an honorable colleague of his (Mr. CROWNINSHIELD) had stated it as his opinion, that a majority of the people of the Northern States were in favor of such a number of gunboats, he felt compelled to make a few observations upon the measure. He would not presume to assert what was the sentiment of the great body of the people of the Northern section of the Union, upon this subject. He knew of no mode by which their sentiments could be collected; he never knew they had been expressed, and certainly he could not pretend to vouch for them. But, as far as he had any knowledge upon the subject, he deemed it his duty, after the broad assertion of his colleague, to state it to the House.

As this had been a subject frequently under the contemplation of Congress, he had felt it his duty to seek such information as he could obtain, and from those sources which were most likely to yield it correct and satisfactory. He had, accordingly, taken frequent occasion to inquire of intelligent merchants, men who had the greatest stake in the defence of our cities; practical seamen, men who were skilled in naval tactics, and of maritime knowledge. And, although his inquiries had been general, in many places, in the Northern and Middle States—particularly in Boston, New York, and Philadelphia—he did not recollect ever to have heard an individual give his opinion that gunboats were a species of harbor defence, upon which much reliance ought to be placed; and certainly never any one who deemed that it could ever be expedient to make them the principal part of our force, such as is proposed by the present bill. That they were a power which sometimes might be useful, and, therefore, not wholly to be omitted, was agreed on all hands; but when they were proposed in such numbers as to absorb appropriations, which were wanted for a higher species of defence, they became a serious cause of apprehension to the friends of an effectual protection to our harbors.

Gunboats might often be of no inconsiderable use in rivers, in shallows, and in landlocked bays. But, in deep water harbors, where the shores were bold, and where the sea had full access, they were of very limited efficacy; and, comparatively, they might be said to be of none at all. Because the time which an enemy would select to attack such harbors, was the very time in which they were useless. An enemy, knowing the nature of your defensive force, would always choose a brisk and leading wind, with a high sea. At such times, gunboats, it was not denied, were of no efficacy, lying almost level with the water, the force of the ball was lost, or turned from its direction by the waves.

But another and most important objection to them was, that they were abhorred by seamen, who regarded them with utter contempt. Men, accustomed to sufficient ship room, could not brook being cooped up like poultry for a sacrifice, with scarcely room enough to turn or stretch themselves. A very respectable and eminent merchant in New York had assured him, that it was impossible to get seamen to supply the present number of gunboats in that harbor; that they were disgusted with the little accommodation they afforded; that, in case of storm or exposure, they were the most comfortless places imaginable, giving their seamen no place of retreat but a wretched hold, into which they must creep, where they could not straighten themselves, but must get, like dogs, upon their haunches.

On water the chief reliance must always be on those accustomed to that element. If these are dissatisfied, they soon communicate their discontent to the landsmen and militia serving on board. Indeed, how is it possible that these will not detest a service at which the hardy sons of the sea repine? Besides so many men, as must be employed, stowed together in such a small space as the decks of the gunboats offer, are sure marks for musketry, and, whenever they can be got within the reach of small arms, their danger and exposure is extreme. I know there is an answer to this; "it is a part of the skill of these boats, it is said, to keep at a distance, and out of the reach of the enemy's fire, by retiring as he advances." This brave scheme forms one capital objection to the whole system, considered as a general and principal portion of our defence. Its tendency is to make men cowards. It teaches them to look for safety, not in meeting the enemy, but in running away. The principle of every other military system, of which I have ever heard, is, to make men fearless of danger—ardent to meet the enemy—to lose the sense of personal hazard in

the zeal of conflict; if I may use the expression, to close in with death, and, by dauntlessness, frown him out of his terrors. In no other way can the natural fears of man be surmounted. But this scheme of seeking safety in flight is of all others the most direct means to encourage cowardice. It was not, therefore, without some regret that he heard his honorable colleague (Mr. CROWNINSHIELD) dwell, with such an apparent satisfaction, on the great advantage which these boats gave of getting out of harm's way, and annoying the enemy from shallows, and concealed behind points of land, retreating as the enemy advanced. He began to fear lest it might be thought that this was their way of fighting in the Northern States, and that such were the calculations which their warriors would make when the enemy should come. But, sir, the soil in which Prebles spring, yields not men who will seek safety in flight, or who will hide themselves when danger approaches. No, sir. They will meet the enemy at the harbor's mouth. Their bodies will be their country's bulwarks. They will engage at close quarters, and if you will not give them decks of your own to fight upon, they will find means to fight on those of the enemy.

The effect produced by gunboats is said to be at long-shot, with ships of war, beyond the reach of whose metal they are to be placed, and to whom their small size presents no object. But, in making these calculations, gentlemen forget there was such a thing as boarding and attacking with boats, and that unless these gunboats were in their nature strong enough to cope with the boats of ships of war, they must retire from the reach of the boats, or fall a sacrifice. A gentleman, formerly an officer in the American Navy, who had very lately returned from the West Indies, had assured him that every thirty-gun frigate upon the Jamaica station, carried four boats, capable of carrying forty men, with an eighteen pound carronade in the bow of each. His colleague talked of fifteen men to a gunboat! Why, if they should have forty, they would each have to cope with two or three times their number, with musketry, and at close quarters; and in a situation, which all agree, is most inauspicious for such a contest. Gentlemen say, Great Britain is so powerful on the ocean, that we cannot cope with her in frigates and heavy ships, and so must have nothing but gunboats. But will gentlemen please to recollect that, if with the greater naval instruments in our hands we cannot cope with her, certainly we cannot with the less. If she is to contend with a gunboat power, will she not bring into action a power competent to contend with gunboats? The omnipotence of the British navy, on which so many gentlemen rest their arguments against naval preparation, if it prove anything, is conclusive against gunboats as well as against frigates and line-of-battle ships.

It was not his intention to have made any observations on the importance and necessity of a navy, in a war with any European nation with which we might be engaged, but, as other gentlemen had referred to that subject, he would make some brief suggestions on that head. He considered that war, once declared, and a navy was inevitable. Did gentlemen seriously believe that the talents, and skill, and enterprise, of our seamen could be confined to gunboats and privateers? When the thousands of brave mariners, whom war will have deprived of subsistence, and condemned to our harbors, shall hear that the enemy is off their coast capturing whatever small force falls in their way, will they be content with anything less than a power capable to cope with them? A power which our seamen are as competent to wield as theirs; and which, although it may not equal in point of number of vessels the force of the enemy, yet may be such as essentially to foil particular efforts. Sir, our seamen will claim the right of being able to look the enemy in the face; and, in three years' of war, a navy would be forced upon you by a sense of duty, which circumstances would make imperative. It is true, it would be a navy of hasty erection, constituted of ill-seasoned timber, and less perfect workmanship. All which disadvantages, by a foresight of the real situation and wants of the country, you might now, by using a time of peace, wholly obviate. I know that, to gentlemen from the South and the West, the very name of a navy is odious. It is a sea power. It is a power which, from their local position, they can never wield. Of such a power it is natural for men to be jealous. And if State influences or local prejudices are to guide the policy of this nation, I will not deny that it is as wise as it is natural. But if we are really one nation, and one people, can there be anything more unwise and impolitic? Sir, if gentlemen from the Southern States would rid themselves of their local prejudices, they would see that a navy was a most desirable power for the purposes of their own safety. In case of a war it would be the only instrument of communication between the different ports of our widely extended coasts. In our harbors it forms the best and most certain species of defence, and it serves also as convoys to our troops, which the exigency of war might require to be passed from one extreme of the continent to the other. It would enable the strength of the North to be brought, in the shortest time possible, to the aid of the South. Instead of being an object of jealousy, it ought to be valued as a bond of national union. I ask gentlemen from the Western States, how, in case of war, they expect to preserve their communication with the sea and the Atlantic market, but by means of a naval force? With such a force the Mississippi may be kept open. Without such an one, it would be inevitably closed.

But, it is said, that we cannot protect our commerce all over the world. This objection is to the use of the power, and not to its nature. Cannot we trust ourselves? Shall we refuse to get in preparation an instrument for our defence because it is possible we may abuse it to our own injury?

But, it is urged that the navy of Great Britain is stronger than any we can possibly bring against it. And is that a reason that we should be wholly

defenceless? Because the armor of our enemy is impenetrable, is that a reason that we should engage him quite naked? But there are circumstances which would give any navy we may possess, great advantages, even in a contest with that nation, so long as it was reserved for harbor and coast defence. Their ships would be at a distance from friendly ports, ours at home. Our men would engage not weakened by long voyages, and fighting in sight of their own shores. In case of an attack upon our cities, had we a naval force, we could always, by contiguity to the shore, outnumber our enemy. We could put as great a force on board as we pleased, and, by coming to close quarters, make victory almost certain. The time would not allow him to enter as fully into this subject as he wished, and hereafter intended. He had spoken, upon the spur of the occasion, and had limited himself to counteract some prepossessions that he had seen attempted to be excited.

Mr. CROWNINSHIELD said he regretted that the present had been represented as a local question, applicable to the South; and it had been stated that the defence of the North was not at all in the question. Mr. C. viewed it in a very different light. He considered the whole seaboard of the United States, that every inhabitant on the coast, was deeply interested in the bill now about to pass. Gunboats would as well assist to protect the passage leading into Boston harbor, as the mouth of the Chesapeake. They were certainly fit to aid in the protection of any of the Northern ports. He was astonished when he heard a doubt expressed upon the subject. He was glad to hear a gentleman from Connecticut (Mr. DANA) say he should vote for the bill. He would rather have his vote than his speech on the subject, as well also the vote of one of his colleagues (Mr. UPHAM) who followed him in debate, and took the same course. Both these gentlemen said they should vote for the bill on the table, and yet they observed they could not approve of this mode of defence. It would thus appear that their votes were vastly more reasonable than their arguments. He trusted that on this bill the House would give an unanimous vote. What was the proposition? To put our ports and harbors in some state of defence. Was the measure embraced by this bill all the defence proposed? No; but it was all proposed to be decided on at present, because it could be almost immediately accomplished. And who knew when this force might be wanted? He did not say it would be wanted to-day, to-morrow, or the next day; but possibly the return of Spring might bring an occasion for its service to repel an invader; and, where the risk was deemed even probable, procrastination in preparing for the worst would be the height of imprudence.

In regard to the utility of gunboats, gentlemen differed; and well and honestly they might, because their use had not in this country been sufficiently confirmed by experience. Mr. C. would, however, quote an instance or two in which they had been eminently useful, even in our own country. He had learnt, from a very correct source that in the war between Great Britain and France, in 1760, when the American colonies took a part, there was an instance on record which proved that these gunboats were employed with success in the river St. Lawrence—that four gunboats, carrying one 18-pound cannon and 20 men each, did attack and capture a brig of 16 guns and 180 men, killing 60 or 70 men in the brig, while the gunboats lost but a single man, and received little or no other injury. If any gentleman doubted, Mr. C. would give the respectable authority of the Vice President of the United States for the fact. Mr. C. had understood he was an officer actually employed by the Colonial Government in that service. Another instance had been given to him by a naval gentleman of eminence, who was not now in the service of the United States, but who, he believed, if called upon, would do himself great honor. Mr. C. then read the statement made by that gentleman, to this effect: "In 1776, the Roe-'buck and Liverpool, two British frigates—one of 'them mounting 44 guns on two decks—lay in the 'river Delaware, below Philadelphia. A flotilla 'of American gunboats attacked them with spirit. 'The engagement was severe, and victory termi-'nated in favor of the gunboats. One of the fri-'gates (the Roebuck) was crippled and driven on 'shore, and would have been taken possession of, 'if the ammunition in the boats had held out. As 'it was, after the Roebuck floated off into deeper 'water, both frigates abandoned their station, and 'left the gunboats masters of the river." It was probable that there might be some gentleman of the Revolution near him who might have known of the fact; if so, would it have no impression on the House? He presumed it would have a favorable impression, as it deservedly ought. He could cite other instances—he could say, that in the neighborhood of Gibraltar, at Algeziras, the Spanish gunboats had in many cases attacked British frigates, and sometimes 74-gun ships, and very much annoyed them. He knew of no instance of their capture, because it often happened, that a new wind springing up, carried the vessels out of the reach of their fire. It was also believed to be a fact, that the British naval commanders in the mouth of the Straits of Gibraltar had always been alarmed in moderate and calm weather when they saw the gunboats of Algeziras coming out to attack their ships of war. Engagements with them were not uncommon, and the boats frequently had the advantage, and captured merchant vessels under their convoy, and carried them off, in spite of all the efforts to save them which could be made by the men-of-war.

Gentlemen also differed in regard to the expense of this measure, and had gone into various calculations to prove their positions. Mr. C. had made some, too; and gentlemen were not correct when they stated their annual expense at four or five millions of dollars. How many men were necessary to man a gunboat he could not say, but he thought fifteen were as many as could be usefully employed in a boat carrying but one gun. Estimate the pay of the men at $12 per month, the expense of one man for a year would be $144—

say $150; $100 each for maintenance, would make it $250 for one man. Fifteen men, at $250 each, was $3,750 for each boat. And the total annual expense of the whole 257 gunboats would be somewhat short of a million of dollars. He did not assert that the expense would not exceed this, but he did not believe it would much exceed it. And if these boats were employed but half the year, it would be but half this expense. And would not this be a cheap defence? He thought it would.

A great deal had been said of the peculiar efficacy of batteries as a defence. Would batteries protect the port of New York? Would even a range of batteries, from the Hook to the city of New York completely protect a passage of a mile and a half wide? If it were but half a mile wide line-of-battle ships could pass up to the city, notwithstanding batteries on the shore. Did gentlemen know that ships of war could fight almost in contact with one another for a whole day? The battle of Trafalgar and the battle of Aboukir, off the coast of Egypt, had proved that. Give a ship of war a favorable wind and tide at the same time, and fire from a battery as many shot as they pleased, if there was a passage left open for her hull, however narrow it might be, and they could not expect to stop that ship, except by accident a mast should be carried away. We must, said he, build gunboats, bomb ships, and floating batteries, and combine their force together, if we mean to prepare effectual protection for our ports in case of war. But, as the question was now on gunboats only, he should confine himself to that point, and not follow the example of some gentlemen who had occupied the time of the House in discussing subjects irrelevant to the present question.

From the report of the Secretary of the Treasury, it appeared that there remained in our Treasury, exclusive of the sums necessary for current expenditure and the periodical discharge of the public debt, a balance of eight millions of dollars, upon which they could operate, and which, he trusted, they would use in part. But this was a measure only preparatory to measures which might follow. If the United States were forced into a war, should they not raise an army, and call out the militia for the invasion of Canada and Nova Scotia? Undoubtedly they would. Would gentlemen say, if they employed an army, that they could limit the expense of its commander to a certain sum? He believed not. So with gunboats, or other measures. Even if the estimates were to fall short of their actual expense, it should not prevent them from taking the proper means of defence. All the resources of the nation should be commanded; they were not to censure the Administration for approving this or that measure; not to denounce that Administration which possessed the full confidence of the people, and would do so as long as it was conducted in the same correct manner and on the same principles as had been pursued by the present Executive. The side-way strikes which gentlemen aimed at the Administration, had no effect on Mr. C., they might follow their own course, but he would support the Administration in all proper measures which it should recommend to their consideration.

He would add a word in relation to the attack on Tripoli, where gunboats had been successfully employed. Without gunboats no impression could have been made on that Power. He was told so by the gallant officer (Commodore Preble) who commanded in the several attacks, and who was now sleeping in the dust. That officer had informed him that, without the assistance of gunboats, he could not have completed an assault. It was well known that, after Commodore Preble returned to the United States, ten gunboats were sent from this country to Tripoli, to support the other naval force then before that place. Mr. C. expressed regret that an opportunity had not been afforded them to ascertain their utility in that quarter. Our negotiator made a premature peace, and thus prevented the gunboats, despatched from America, from operating in the new bombardment of Tripoli, which certainly was contemplated by the commander who succeeded Commodore Preble. It was not a sound argument, against these boats, that one of them had miscarried in crossing the Atlantic on the outward passage, for merchant veasels were often lost at sea; but it was clear that all the remaining boats returned safe to the United States.

Mr. C. would finish his cursory remarks by observing, that he was decidedly in favor of passing the bill. He wished gentlemen generally to agree to it. The boats were a valuable mode of defence; he felt sure they would be found so, and he hoped every member would give support to the measure, trusting to the patriotism of the House that the bill for the further protection of our ports and harbors by land batteries would also be agreed to, when it should be properly brought before them.

Mr. Southard was in hopes this bill would have met with very little opposition, especially, when it was considered that it was but a part of a system of defence, of which, the other parts would be decided in progression. Various objections had been made to the bill. Some gentlemen supposed that gunboats were altogether insufficient for defence, and that the scheme was merely ideal and visionary; and some had attempted to prove that gunboats had never been used. A gentleman from Massachusetts had just disproved this by circumstantial accounts of two engagements; one on the river St. Lawrence, and one in the river Delaware. In the last instance, about twelve gunboats engaged two British ships of war. Mr. S. would state, from good authority, that the reason why these vessels were not made a prize, was, that the gunboats were not supplied with a sufficient quantity of powder and ammunition. This statement and fact would go far to do away the impressions of those gentlemen who suppose that gunboats are of no efficiency as a defence, or that their utility was ideal. In the progress towards the passage of this bill, every day new difficulties had been discovered, and new objections raised to its pass-

age. Some gentlemen told them if they passed this bill, and appropriated a sum of money sufficient for the object proposed by it, that they would not leave money in the Treasury adequate to the expense of building land batteries, &c. Another objection was, that if they appropriated money for building gunboats, fortifications, and batteries for the seaports, there would be no money left wherewith to provide arms for the militia. If these remarks were even correct, they possessed no weight, because gunboats, fortifications, and land batteries, and arming the militia, were but three several parts of one great system.

After these remarks, he would only state his own idea of what ought to be done. He thought they should first provide gunboats; secondly erect fortifications and land batteries; thirdly, pass a law providing for arming the militia—for, unless men were armed, they could not prevent an enemy from landing, destroying, and laying waste the country. Mr. S. hoped everything would be done which was requisite for protection. Gentlemen had said that our resources were not sufficient to meet these objects. Mr. S. would observe that there was, in the Treasury, money sufficient to answer all these purposes; if not, the country had resources within itself, fully adequate to every measure of protection and defence. He would not go, as some gentlemen had, into calculations of dollars and cents. If the nation was embroiled in war, its expense would be incalculable. It was impossible to form even an idea of the enormous expense that would accrue from war. But, Mr. S. would withdraw all the money out of the Treasury; he would not leave a cent; he would even drain the blood from his own veins, if it were necessary, for the defence of his country. If the nation was involved in war, life, liberty, and property, everything, was at stake; and all their energies should be exerted to repel the invader.

A number of gentlemen appeared desirous of building ships of war for the protection of our commerce. Mr. S. was of opinion that, whatever might have been proper heretofore, such a measure would be inexpedient hereafter. Of what effect would be any naval force which the United States could erect? It would form an object of derision for the enemy, and afford a pretext for war. It would increase the expense of the country, and add to the strength of our adversary. Would gentlemen take a view of Denmark, and other European Powers? See them all swept from the ocean, and their vessels where the Navy of the United States would soon be, were any to be erected. As to the ships of war which the United States now had, he should have no objection that those which were fit for service should be distributed as an aid to batteries and other works, wherever it might be deemed most proper to make such distribution. He was clearly of opinion, whether war or peace might be the result of our present uncertainty, that preparation for defence ought immediately to be commenced. If preparation would not prevent a war, it would tend to shorten the term of its duration.

Some gentlemen had gone into calculations, on principal and interest, of expenses for six or seven years. Away with such trifling! Let us, said he, act the part of Americans. Let us go boldly into defensive operations, and let us not be saddled with a long and tedious war. If war should be our lot we shall experience a temporary privation—not of the necessaries, but of the luxuries of life. For every thousand we expend for opposition to the enemy, we shall save a million in our own resources. Our citizens would turn their attention to domestic manufactures, and, although no man more than himself deprecated war, he thought advantages might result from it to the nation. He hoped the House would pass the law, and take such further steps as might be necessary to prepare fully for defence; that they would discharge with care the responsibility attached to their situation, and support, throughout, the justice of their cause, and the rights of the people.

Mr. KEY said, he conceived he possessed the right to give his sentiments on this subject; and he felt it a duty to assign those reasons which would induce him to vote for the bill under consideration.

He greatly regretted that the House had no general system of defence laid before them, for the protection of the country, and more especially of its vulnerable points. Such a plan would have been attended with good consequences; it would have enabled them to progress gradually from one point to another, feeling, as they went along, so that, whether the event were peace or war, the honor of the nation might have been preserved. He took up this subject, as presented to him by the committee who were appointed, not to devise a defence for our shores, but for our ports and harbors; and in this point of view the bill did not strike him as comprising a general system of defence, but as a particular measure for aiding in the protection of the most prominent parts of our country. He did not like that different parts of a great national subject, should come before the House from different committees, because they should properly form a connected series; but, as the measure had come under consideration in this form, he would endeavor to show that the principles of the bill, as far as they did go, were correct and proper.

Mr. K. had no doubt but, in forming a general system of defence, some few frigates would be found necessary; but he strongly feared they could neither construct line-of-battle ships or frigates before it would be necessary to use them. Some gentlemen had asserted that the nation was at war; he would not combat this position, though it was not tenable. Some gentlemen said we were on the eve of war, with whom he thought. If they were engaged in war, it would not be upon any other part of the frontier than that accessible by water. Of course the most vulnerable points of the country were upon the seashore. He therefore thought that every species of defence competent to the protection of these points should be adopted, and of this description were fortifications

and batteries, aided by gunboats; not that they composed the best possible means of defence, but the best that could be constructed within a given time.

It had been said that gunboats could not act efficiently alone; but he believed that, as auxiliary to fortifications, they could be applied in such manner, and under such circumstances as to prevent ships of war from acting to effect. It was known that a ship of war in making an attack on any particular point, always placed herself in such a manner as would enable her to act with the greatest effect; she anchored with her broadside to the battery; and, under such circumstances, gunboats were competent to make her change her station.

There were, as far as Mr. K. knew, in modern times, but two instances, and but one that was remarkable, of the efficacy of gunboats as a part of a system. One case was the defence of Cadiz, when Nelson, with his whole fleet, anchored in the bay of Cadiz, and was repulsed, principally, he believed, by the instrumentality, but certainly by the assistance of gunboats. In case of attack, made on our ports, gunboats being locomotive, would, in such circumstances, be advantageous. Another case of the success of gunboats occurs in the bay of Gibraltar; they are there secured from attack, until, like spiders darting upon flies, they spring out in calm weather, and always capture their prey.

These gunboats took their origin in an early part of this century, when Gibraltar was surprised by the enemy. Gunboats were then introduced into the Gut of Gibraltar, and from the time that Britain captured Gibraltar, to the present day, such has been the effect of these boats, that the British were always obliged to send supplies and provisions to Gibraltar under convoy. He had mentioned this circumstance, to show that gunboats had acted offensively as well as defensively. If gentlemen, however, considered them as alone a sufficient defence for this country, they were most miserably mistaken; they were merely eligible as a means of defence in aid of fortifications. Mr. K. agreed with the gentleman who had yesterday said that these boats would be no protection against ships of war, with wind and tide in their favor, in Chesapeake Bay; but, as offensive weapons, they might be placed at points where they might lie in readiness till a proper time should arrive, in which they could act with advantage. A number of frigates had been, for some time, lying in the Chesapeake. Mr. K. did religiously believe, if the nation had been in a state of war, (and a contrary situation alone had prevented the experiment being made,) that twelve gunboats, stationed at Norfolk, could have driven them away from their anchorage. And why did he believe so? Because they could have chosen their time, when the weather was calm, and large ships could not be worked. It was in this way that gunboats could greatly injure ships of war, and, if not destroy them, could injure them so much as to render them unmanageable. He did not conceive that gunboats should be considered as incapable of rendering essential services, because they had not hitherto driven the British squadron out of the Chesapeake, for the measures taken by the Executive had not warranted such a step. We are not at war, said he; when, by the shameless impressment of our seamen and other injuries, and when consummating her folly and wickedness by the attack on the Chesapeake, the English nation gave cause for war, we did not go to war. In his judgment, and he was reluctant to withhold praise where it was due, a much wiser course was taken; he meant the call upon that Government for reparation before a resort was had to war. Had they gone to war, on the spur of the occasion, they would have committed to the mercy of the British navy twenty millions of American property, afloat on the ocean; it would have fallen a sacrifice to the superior naval force of our opponents. If honorable reparation be made, the course which had been pursued would have been wise; at all events, whether reparation be made or not, time had been given to our citizens to save a great portion of their property. A measure of immediate war would have brought bankruptcy on our cities, and ruin on our citizens. It was well, for this reason, to put the event off as long as possible—the longer it was put off, the better we should be prepared for it when it did arrive. There was no necessity for immediate precipitation, and measures had been wisely taken; and they now daily expected a Minister from England for the purpose of offering the cup of peace; whether it would be such as the nation could drink of, he could not say. No measure had yet been taken by this Government usually taken by nations in a state of war. He hoped the country would never again be caught in a state so perfectly defenceless, and at the mercy of the enemy, nor be caught napping at its post. Even contemplating a present peace, he considered every protective measure to be imperiously demanded by the situation of the country. The building of ships of war or frigates could not be accomplished in the necessary time in case of immediate war, but he thought they would be driven, by necessity, to this means of defence whenever the exigency of the times required a strenuous defence.

An honorable gentleman had yesterday observed, as one reason against this measure, that it would, if carried into operation to the proposed extent, prevent the adoption of another measure, on which the gentleman placed much reliance—arming the militia. Mr. K. was greatly in favor of this principle, and voted for it; he also wished it to be carried into effect as early as possible; he thought it would be wise and prudent to arm the militia; but, when the question now presented itself, should our funds be exhausted by a general arming of our militia, neglecting to afford that protection so necessary to our ports and harbors, he should be strongly opposed to it, because the whole body of the militia would not be called into service at one time, and because, by arming them now, at the public expense, they would draw those sums of money from the Treasury

which could, under present circumstances, be much more advantageously employed.

When he reflected on our expectation of an immediate rupture with a foreign Power, on the situation of our most vulnerable points, and the danger to which they were now exposed, all conspired to influence him in his belief that the measure under consideration ought to be adopted. One other reason; gentlemen, ardent for the protection and safety of the country, who expressed the greatest dislike to this mode of defence, had not pointed out any other—had offered no more eligible mode as a substitute. Because this did not meet entire approbation, were they to have no defence? If he could hear gentlemen of talents demonstrating how the same money could be expended with the same effect, in the same time and to the same object, he should listen with pleasure. He had, however, assigned his reasons for the vote he should give; during the discussion which had taken place on the bill, he had listened with great attention to arguments on both sides of the question; and, looking with a single eye to the expediency of the measure, without considering from what quarter it emanated, he did think the bill ought to pass.

The Committee rose, and the House adjourned.

FRIDAY, December 11.

The SPEAKER laid before the House a letter from the Secretary of the Navy, accompanied with two statements marked (A and B,) in relation to the numbers of officers and men, respectively, belonging to the Navy of the United States, and the Corps of Marines; to estimates of the number of officers and men which would be necessary to complete the manning the whole and entire Navy of the United States, including the gunboats; and to the expenditures necessary for maintaining them in actual service during one year; also, to the timber and other materials belonging to the United States now on hand, suitable for building ships of war; prepared in obedience to resolutions of this House of the thirtieth ultimo; which were read, and ordered to lie on the table.

Mr. FINDLEY, from the Committee of Elections, to whom were referred, on the fourth ultimo, and seventh instant, petitions from sundry qualified electors of Montgomery county and part of Frederick county, in the State of Maryland, and from sundry other citizens of the said county of Montgomery, relative to the election of Philip Barton Key, the member returned to serve in this House for the third Congressional district in the said State, made a report thereon; which was read, and committed to a Committee of the Whole on Tuesday next.

Mr. DAWSON, from the committee appointed on so much of the Message from the President of the United States as relates to the Military and Naval Establishments, to whom was referred, on the eighth instant, the representation and petition of Amos Stoddard, and all the officers and soldiers composing the present Army of the United States, made a report thereupon; which was read, and committed to a Committee of the Whole on Monday next.

THE GUNBOAT BILL.

The House resumed the consideration of the bill for appropriating a sum of money for providing gunboats.

Mr. RHEA said, before the question was taken on the passage of this bill, he wished to make a few observations. Had the bill been positive in its provisions, he should have doubted whether to have given it the additional weight of his vote; but the bill being only an authority given to the Executive to erect a particular means of defence, and having full confidence, that any money appropriated in this manner, would be employed for the advantage of the nation in general, he felt inclined to give his vote in favor of it. The first question which presented itself was, whether protection was necessary or not; and if this question had been properly considered, it would have remedied a great many objections, which had been made to the bill. It seemed to be the general opinion, that something should be done; one gentleman said they were at war, one represented them as on the eve of a war; another, that they were neither at peace or war; but every one contemplated our situation as somewhat dangerous. If then they assumed the position, that protection was necessary, it was easy to discover who were to be protected—the people of the United States, and their possessions; and under this general head could be brought into view all that need be considered on the present occasion. A question now arose, by what means this protection was to be afforded? The answer to this would embrace every principle of defence, which had been proposed to the House by bill, resolution, or in any other way; and in answer to the objection, that every particular part of defence, was not brought into view at once, it might be answered that it would require considerable time, and long discussion to digest the whole great system of defence, as parts of which one gentleman wished a large army, one fortifications, one a navy, and one gunboats; but the measure proposed by the bill should be now determined, as it was proper immediately to commence the work of defence. A reason had been urged against this bill, that in contemplating any particular mode of defence, they should adapt it to a general system, and to such an extent as would be proportionable to the resources of the nation. Mr. R. conceived that the resources of the country would be sufficient to carry into effect not only the measure proposed by this bill, but every other part of a system, which it might be necessary to adopt.

Mr. R. would not trespass on the time of the House, as he only wished to connect the reasons, from which he should give his vote in favor of the bill.

Mr. MILNOR said, after the subject had received such a lengthy and labored discussion, it was not his intention further to detain the House; but the yeas and nays having been called, he wished

merely to assign a few reasons which induced him to vote in favor of the bill. It was not because he had heard arguments which tended to convince him of their very great utility, or that he himself placed great reliance on them, though he was willing to admit that they might in certain places, and in certain cases, be useful. The reason for the affirmative vote he should give on this measure was, that he found a great majority of the House in favor of it. It was a system which the friends of the Administration brought forward, and which he supposed must accord with the wishes of the Administration. Therefore, as he could not obtain that system which he believed more efficacious and more proper for the nation, rather than risk the having no defence at all in case of war, he was willing that this system should be tested. When he had offered an amendment the other day, he had stated his ideas generally on the subject. He had then endeavored to show that other means of defence were more efficacious; but, that this system should be fully tried. Although he thought the number too large, he should vote for the bill, not wishing at the same time, by such a vote, to be considered as expressing a belief that they would answer their intended purpose.

Mr. Johnson said, although he should not pretend to propose measures of great national defence, he considered it a prudent exercise of his right as a member, to express his sentiments upon subjects proposed by others, upon which it became his duty to vote. He was in favor of the passage of the bill. He believed that they had arrived at a crisis; a crisis which had marked the maritime annals of Great Britain with the blood of American citizens; the period had arrived when this nation must receive a satisfaction for injuries inflicted, and a security from future wrong; or the sword must again be drawn to defend that liberty which was the boast of all, and which had cost so much. They had before them evidence sufficient to demonstrate the probability of war, an event which could not be long protracted but by an honorable accommodation. While America mourned the loss of her sons, she had wisely forborne to strike a blow which her wrongs had justified. New instructions had been despatched to our Minister at the Court of St. James since the outrage upon the Chesapeake, and a last appeal made to the reason and justice of that Government, by whom they had been so much injured. The negotiation had terminated in England, and even now a special Minister was expected from Great Britain to attempt a settlement here. The door to reconciliation had not been closed, and he hoped it would not be barred so long as a real desire could be traced in Great Britain to make an honorable settlement of all important differences. But everything they could hear or see proved the propriety of making preparations for the worst event. Our Government had been the injured party, and must have redress.

The conduct of the Administration had been arraigned. Mr. J. did not hesitate to approve the conduct of the Executive, and particularly in this late and important transaction; it had acted with prudence, wisdom, and firmness. If feeling had not been governed by prudence, the nation might have been in a state of actual war. Perhaps our wrongs might have justified it; but while there remained a hope for honorable peace, negotiation was the proper course. We fear no nation, but let the time for shedding human blood be protracted, when consistent with our safety. If our claims upon the justice of England should be disregarded, there would be time enough for human butchery. He looked around him, and saw many who had witnessed the calamities and miseries of the American Revolution. But if war could not be avoided, accumulated horrors would not induce the American people to endanger their independence. They would say, like the immortal Washington, the former victorious leader of their armies, "I will conquer or die with my countrymen." Unanimity, in times of public exigence, was all important; any other course than that which had been pursued by the Administration might and would have created division; but if they should now be driven into war by the injustice of Great Britain, where was the man who would not be with them, who would not approve the conduct of the Administration, pronounce our cause just, and appeal to Heaven for victory.

It had been said that the gunboat system was a substitute for every other defence. Mr. J. said that this must be an error. Gunboats, land batteries, and fortifications, are designed to defend our cities and seaports, from the destruction of a maritime force, and to expel hostile fleets from our waters, which end he believed they were adequate to effect.

It had been said that the present Administration was in a state of total incapacity to defend the nation, and that the measures pursued would subvert our liberties, and lead directly to ruin. This is not the fact. The treasonable batteries of internal enemies had not been able to shake the strength of the Administration in the slightest degree, and with the greatest ease the traitors have been put down; nor had the measures of the Administration been ruinous. Our Government and the people had been prosperous and happy, so far as they have depended upon the Administration. And when our troubles and misfortunes were traced to their source, it would be found in the unprincipled conduct of the British Government. Their injustice had been coeval with the settlement of this country. Civil and religious intolerance had driven our ancestors from their native soil to this country. And British injustice this nation would experience, until it made a manly stand against their pretensions. Other nations had injured us, but not as vitally as Great Britain. Other nations have not impressed our seamen, they have not murdered our citizens; they have not violated the honor of our flag. But Great Britain has injured us in every possible relation, our commercial, political, and personal rights, had all been violated.

The same gentleman (Mr. Elliot) had introduced the subject of an impertinent letter, written

by Captain Love, a British naval officer, reflecting upon the proclamation of the Executive, and much sensibility was expressed, that our naval officer sent this letter, and waited for further orders from the President; and the gentleman exclaimed this was the gunboat and proclamation system. Mr. J. said the conduct of the American officer and the President was correct. What other conduct did the gentleman wish? Did he wish that the nation should be involved in war for a disgraceful, scandalous, and impertinent letter, written by a petty naval officer of His Britannic Majesty. That letter excited contempt and indignation; but it was a small item in the general account against that nation. If war could be justified for this impertinent letter, certainly that gentleman would not be wanting in a conflict between a foreign Court and this Government upon acts of real injury, as he seemed to insinuate. Mr. J. said they had better look to the protection of their commerce, which was swept from the ocean, the capture of their vessels, the condemnation of lawful cargoes, the impressment and slavery of American seamen, and the blood of this people; the citizens of the United States were attacked in a national ship carrying the symbol of the sovereignty of this nation, and in sight of the sacred soil of America, by the hands of piratical assassination.

Another gentleman (Mr. DANA) stated emphatically, that we had not in our possession any documents containing the late correspondence in England, between Mr. Monroe and the British Government, upon this late outrage. He said he could not see the object of the gentleman in thus expressing himself; but he would state that the President had laid the whole correspondence upon that subject before the House in a confidential communication; that the House had the papers in their power, and the President had requested that they might be returned when the House was satisfied with the perusal of their contents, which had been done.

As to the system of gunboats, which had involved such a wide range of discussion, and almost every national topic, he had no practical knowledge of their utility; but he could state the evidence he had of their utility to the full extent contended for. First, it was a system which had been recommended by the President, supported by the opinions of General Gates, Commodore Barron, and Captain Tingey. He perceived that a very large majority of the Representatives of the seacoast, from Georgia to Maine, was in their favor. They are used by most of the Powers of Europe, and particularly in the Mediterranean, for defence, and often for offence. They were considered particularly useful in the North of Europe and the Baltic, on account of moderate tides, shallow water, and narrow seas. He had also many examples of their practical utility. In the war between France and England and her colonies, a case had been cited of an attack and conflict in the river St. Lawrence in the year 1763, between four American gunboats and a French vessel of war, carrying 16 guns and 180 men. The battle was obstinate; the French lost 60 or 70 men, the hull and rigging of the vessel were cut to pieces, while only one man was killed on board the gunboats. A battle had been mentioned by the same member, which happened in the Delaware during the Revolution, where two English frigates were attacked by gunboats, one of the frigates driven from our waters, and the other stranded, and would have been captured, but for the want of powder. Again: the celebrated battle between the English navy and the French flotilla of gunboats off the port of Boulogne, in the British channel. Lord Nelson was charged with the destruction of these gunboats, and made the attack for that express purpose. The first attack was made with thirty vessels of war of all sizes; he failed in the enterprise, and was obliged to retire. This great naval commander, not having satisfied himself or his nation by this attempt, ten days after returned to the assault, with more ships-of-the-line, a larger number of frigates and brigs, and renewed the fight; after a very bloody battle and great loss, he was again repulsed. In fact, nothing did the English so much fear as these gunboats, properly managed. A few years ago, it would be recollected, Napoleon collected above one hundred thousand soldiers for the purpose of invading England. This created alarm and agitation in Great Britain, and this project the British Cabinet knew could not be effected without the aid of the French flotilla of gunboats at the port of Boulogne The late Minister, Mr. Pitt, to divert the attention of Napoleon from this design, by British gold and British influence, created a new coalition upon the continent of Europe against France. For the moment, this coalition had its desired effect, and it is known to all how it had terminated. It had resulted in the conquest of the North, cost the lives of thousands, and inundated Europe with human blood.

Much has been said by gentlemen of the naval engagements in the Liman Sea, referred to in the President's Message at a former session. These were two bloody and obstinate conflicts between Russian gunboats and Turkish vessels of war, in which each fought with desperate courage; and the victory had been assigned, by the gentleman from Connecticut, to two causes: First, the superior science and information of the Russians, and the debased brutality of the Turks, at the time this battle was fought. Mr. J. said he had never understood that the mass of the people of Russia were more enlightened, except about Petersburg and a few other populous towns, than the Turks; nor did he ever understand that philosophers and men of science made braver soldiers than plain men of common sense. This brutality spoken of could not certainly apply to the Turkish commander; at least he must have had information enough to find the channel and shallows of the Liman Sea, as science and philosophy were not essential qualifications for a good pilot. The second reason assigned for the victory of the Russians is the narrowness of the Liman Sea and its shoals, and the difficulty of moving to advantage

the large vessels. This was one of the advantages that the advocates of this system contemplated from its adoption.

Another gentleman had observed that the Turks were not conquered until their vessels were stranded. In that very way, said Mr. J., will the United States conquer them if they come into our harbors and shallows, where no superiority of science will operate against the Americans. Gunboats were not designed to leave the water and mount upon dry land. An invading foe would be met in a different way, and with a different force, the militia; with that spirit of volunteering which had manifested itself on a very late occasion; every part of the Union would be in motion; and then they would see also the spirit of that State which gave birth to a Preble and other heroes, as a member from Massachusetts (Mr. QUINCY) had said. Mr. J. said he lived in a State far removed from the ocean, and could not apprehend immediate danger from a naval force; but the people of Kentucky were willing to make this a common cause; they wish every part of the Union to be defended. In case of war, they would call upon Congress, through their Representatives, for the means of protecting their Western frontiers from the inroads of savage hostility. A large frontier will be exposed to savage incursions. English influence will excite the savages to hostility. They had even now before their eyes monuments of British influence and savage ferocity; they had at this time before their eyes widows and orphans, who had lost their dearest companions by this influence and hostility. Let not a foreign enemy, then, imagine that he could divide the American councils or the people by arts of diplomacy. Our President, in his conduct, had been actuated by a love of peace; and should this nation be compelled to take up arms, the people were unanimous; they were pledged by their resolutions to support measures of the Government consistent with the nation's honor and the nation's rights. They were not only bound by resolutions, but the more sacred principles of patriotism. The ten counties Mr. J. represented had expressed their sentiments; they would defend their independence at the hazard of life and property; and he believed other parts of the State were not less patriotic. He said he was one who would rally round and support the Executive in every measure which it might pursue in a conflict with a foreign Power in vindication of the honor and rights of the people. The same sentiment had been expressed at the same time in Georgia and Maine; the collected voice of the nation had met at this place, the centre of the Union, and had resounded across the Atlantic; the result would soon be known.

The gentleman from Vermont (Mr. ELLIOT) had asserted that the nation was disgraced. Mr. J. said he could not admit that the United States had disgraced herself. America had acted with dignity and justice; but Britain was disgraced by her injustice, and the time had arrived when the United States would prove whether she had disgraced herself or not. If the claims of this Government upon the justice of Great Britain should be spurned at this moment, and America tamely submitted to the injury and insult, then would it be said with propriety that America was disgraced, and not till then. For, while they asked redress for injury and insult, they acted rationally; but if they tamely submitted to this humiliation, either before or after a demand and refusal of satisfaction, then, and not till then, were they a disgraced people!

Mr. MACON said, it appeared to him that the only question at present discussed was, whether the number of boats authorized by this bill was the proper number. Some cases had been stated in which gunboats had been efficacious, and some in which they had not. Mr. M. did not mean to dispute their efficacy, but as gentlemen on the sea-coast were divided on the subject, until gentlemen could better agree as to number and utility so large a number ought not to be built.

There was another thing he should have been glad to have seen before he voted on this bill; he should have wished to have seen how these boats were to be manned. They might be told that people would volunteer their services on board of these boats. There must be some way in which they must be manned; unmanned, they would be perfectly useless. He did not like legislating in this detached way; it had been tried in former days; first passing one law, they must pass another to render it effectual. He wished to see some efficient method in which these boats should be manned; he could have wished that the whole system should go hand in hand. The President was authorized to man these boats. Was any authority given to draught sailors for the purpose, or how were they to be supplied? It was essential that this should be known. He should wish, and if he thought he could succeed he would make a motion to recommit the bill to a select committee for the purpose of making this provision. Suppose twenty boats were stationed at Norfolk, did they know that these boats could be manned? In his opinion, the bill should contain a regulation for manning them; every law should stand upon its own merits, and he should always protest against passing one law which would oblige them to pass another to carry it into effect. Let us, said he, see the whole system, and then let us vote upon it.

Mr. BLOUNT informed his colleague, who had just sat down, that the committee to whom that subject was committed had it in contemplation to provide the means of arming these boats, by establishing a marine militia. The gentleman would readily conceive that a bill to carry this into effect must require a great deal of detail. The detaining of this bill till that subject was read would have occasioned great delay; time sufficient had already been consumed in which one third of these boats might have been built. The gentleman had expressed a wish that every law should stand upon its own merits. Mr. B. concurred with him in this principle, and had contended for it on this very subject. He had not wished this bill to be connected with or encum

bered by any other subject, but to stand on its own bottom, and for this reason the marine militia had been kept distinct from the subject of gunboats.

Mr. G. W. CAMPBELL said, it had not been his intention to speak on this subject. There was sufficient cause to induce him still to decline entering into the debate. His indisposition would certainly prevent him from examining the subject in that manner which its importance required; and he would therefore have persevered in his original intention of remaining silent, had not an attempt been made to make an impression on the public mind, that the friends of this measure were about to drain the Treasury of the United States for a system of defence that would prove inefficient—for a mere useless experiment. This might therefore require some explanation, that the motives of gentlemen who were about to vote for this system of defence should be known, as well as their objects. In the discussion of this subject, gentlemen had also gone into an examination of the utility of our Naval Establishment, and the expediency of increasing it at this time, which was in his opinion a distinct subject, that had little or no connexion with the proposed measure. It would be time sufficient to examine that question when it came properly before the House. There had also been a very novel mode of argument introduced on this occasion, and it was the second time it had been used during the present session—that of gentlemen arguing against the expediency of a measure, while they declared their intention to vote for it. This was indeed a new method of legislating, and may be intended to answer a double purpose: it may perhaps enable gentlemen to say to those of their constituents opposed to this measure, (if such there are,) We were inimical to it; we exposed its weakness in the House, and showed its inefficiency—you cannot therefore blame us for its adoption. While, on the other hand, they might say to the friends of the measure, We have supported it by our votes, and are therefore entitled to your confidence on that ground. Mr. C. did not say that this was the object of gentlemen; but if it was not, it appeared to him difficult to ascertain what it could be. It would have appeared much more consistent for those gentlemen who seriously believed the system to be useless, to vote as well as speak against it; and it were to be wished that those who intended to vote for the bill before the House, had permitted it to pass without opposing it; but, as this course of argument had been pursued, he deemed it a duty he owed to his country, to those he had the honor to represent, and to himself, to express to the House (though in a very brief manner) some of the reasons which would induce him to vote for the bill. He did not pretend to possess much information on the subject of gunboats—he had therefore hitherto declined entering into the discussion, and waited to hear what might be advanced on the subject by those who had greater opportunities than himself of knowing their efficiency or inefficiency—but he had found those who had spoken on this subject were obliged, like himself, to depend on the information of others, and did not pretend to furnish the House with any practical knowledge on this subject. They must, therefore, form their opinions from the reasoning on the case, and such evidence as they were possessed of.

The first important inquiry would seem to be, whether the present state of our relations with foreign Powers was such as required the adoption of effective measures for national defence. It appeared to be agreed by all that it was. No one denied the importance of the present crisis. It could not be denied by any gentleman who would reflect a moment on the repeated aggressions that have been committed on our commerce, the violated rights of our seamen, the insult offered to our national flag, and the murder of our fellow-citizens. These all go to prove, incontestably, the necessity of our putting the nation in a state of defence. The next inquiry was, of what nature ought our defensive preparations to be? It is clear, they ought to be calculated to meet and repel the attacks that we have a right to expect from those who are likely to become our enemies. Those attacks are to be expected on our coast and seaport towns, which are most exposed, and most vulnerable to a marauding enemy. The species of defence, therefore, that we ought to adopt, should certainly be such as was calculated to protect, as far as in our power, our coast, our harbors, and our seaport towns, from insult and ruin; unless, indeed, these are to be abandoned to the enemy on his first approach. We are then to determine whether we shall defend these or not.

Will the nation consent to expose to an enemy, without an effort to repel him until he has landed, the whole extent of your seacoast, all your seaport towns on the margin of the ocean? This would be a dangerous experiment, and he had supposed too wild a scheme to be advocated by any reflecting politician: though it seemed to be the favorite doctrine of some gentlemen in this House, who were opposed to every species of defence, except placing arms in the hands of the militia. It is true the foe might be repelled by your militia, and no doubt would be; but, what would the citizens of those towns and on your seacoast say? Would they not justly complain that you had neglected their interest, had deserted them in the day of danger, and left them to be pillaged and destroyed by an enemy, without one effort to protect them? They certainly would, and their complaints would be well founded. There were, however, he presumed, but very few willing to subscribe to this doctrine—though it had been advocated by some gentlemen in this House, who appeared opposed not only to ships of war and gunboats, but also to fortifications.

Taking it then as admitted, that the coast and seaport towns are to be defended against naval attacks, what were the means in their power best calculated to effect that object? On this point there was, as might be expected, some difference of opinion. Mr. C. believed it would not be contended by any gentleman that our coast and seaport towns could be effectually defended by fortifications alone. No man was so wild in his

plans as to say so. The whole coast, from Maine to the Gulf of Mexico, cannot be fortified—some other mode of defence must therefore be resorted to. He apprehended also, it would not be contended that the naval force now in our possession, in addition to fortifications, was sufficient to afford effectual protection to our seaports. This had not been pretended; its inefficiency was too well known for a single individual to rely upon it. There was then no question on the point that they must acquire an additional floating force in aid of fortifications. What kind of addition was it in their power to make? There was but one alternative left them—either to build an additional number of ships of war sufficient for that object, or to resort to the system of gunboats. They had been very earnestly called upon by some gentlemen to make an addition to the Navy, and unite this with gunboats. This would probably be found impracticable at the present crisis. Mr. C. had expected that those gentlemen who wished to have reduced the number of gunboats proposed, and substitute a few frigates in their place, would have shown the practicability of building their frigates in sufficient time to answer the present exigency. If this could not be effected, the proposition was useless. Mr. C. said the building of a large navy was not consistent with the policy or interest of this country. If it were in their power to do so, it would be at war with the genius of their Government, the interests of the people, and the security of their liberties. But, Mr. C. observed, their means were not adequate to raise a navy sufficient to cope with that of Great Britain. This could not be pretended. Besides, if such a navy was ever presented to them free of expense, and ready for service, it would be their duty, and the interest of the nation, to sink or destroy it, rather than incur the enormous expense necessary to support it, and the danger into which it might bring the rights and liberties of the people. But, said Mr. C., suppose it should be determined according to the wishes of gentlemen to build a few ships of war in aid of gunboats, let us inquire whether such a measure would answer the purpose, or whether any advantage could be expected from the ships so to be built. It is stated on the floor of this House, particularly by some gentlemen who are in favor of building ships for defence, that the nation is either now at war, or on the eve of war. The means of defence must therefore be such as can speedily be prepared for, and brought into actual service. Suppose a law was passed authorizing the building of ships of war, how long before they would be ready for defence? The Secretary of the Navy, in a report made to this House two years ago, (in 1805,) expressly stated, "that from the time 'Congress would authorize the building of seven-'ty-four gunships, it would require three years 'to prepare one for being launched." It is true he states that six might be prepared in the same time. This was the official report of the Secretary, and whose duty it was to be acquainted with this subject, and have these vessels built if authorized, and there is, therefore, no reason to believe a less time would be sufficient. It would be in vain for gentlemen to say, the frigates could be built in a much shorter time than 74's; the difference of time necessary for the erection of each of these kinds of vessels must be inconsiderable. They could not expect to build frigates in less than two years; and suppose you had six or ten of them in that time, ready for sea, what is to defend you in the mean time? Has any gentleman, who can, and will reflect on the subject, such confidence in the friendly politeness of those who are likely to become our enemies, as to suppose that, if we are to have war, they would wait and refrain from hostility until those ships of war were prepared to defend the nation? And if not, what benefit can be derived towards defence from begining to build them at this time? None that can be perceived. You cannot, said Mr. C., have them in time to defend you against the impending storm—it must blow over before they are ready. Will you then lay out your resources in time of danger for means that cannot protect you against that danger, in order to have them ready at or after the return of peace? If this were considered good policy, he confessed himself heretofore a stranger to it. Mr. C. asked, if it were not essentially necessary, that they should employ their resources in a system of defence that could be prepared in time to meet the threatening danger? It appeared to him, that no doubt could exist on this subject. If the system proposed by gentlemen as a substitute to that under discussion, could not be prepared in due time, there was no alternative left; they must adopt that of gunboats, the only one which could be expediously brought into service, or they must remain without defence in times of the most imminent danger. These can be procured in a few months, they can be ready to meet the exigency, and may be used as occasion shall require. Mr. C. said, he might here remark with respect to some gentlemen who opposed this bill, as well as those who had expressed a wish that part of the number of gunboats proposed should be struck out of the bill, that it would be well for them to consider how they would account to their constituents for their conduct in voting against, or diminishing the only mode of defence which was practicable; it amounted to saying, "We are determined our 'seacoast shall not be defended at the present 'time; it shall continue exposed to the attack of 'the enemy." Mr. C. said, if no efficient means of defence were adopted, it would be in the power of an enemy to lay our towns under contribution; to carry ruin and devastation along the whole extent of our seacoast, wherever he came, and strike a general terror in the people near the margin of the ocean. This might compel the Government to accept such terms of accommodation as the enemy should prescribe. He did not say that this was the object of gentlemen, nor that it would certainly be the case, but he would say, that it might and probably would be the consequence of such a course of proceeding as had been advocated on this floor.

If, then, it appeared sufficiently clear that the

mode of defence proposed in the bill was the only one that could be resorted to with safety, it would seem that no question could exist, except as to the extent to which it was necessary to adopt it. Much, indeed, had been said respecting the expense of these gunboats. Mr. C. was not at this time disposed to enter into a minute inquiry on that subject—the expense, he believed, had been highly exaggerated on the one side, and probably diminished on the other. The estimates made by the Secretary of the Navy in 1805, in his report on this subject, do not precisely agree with those made by him during the present session. Perhaps this difference may arise from the kind of gunboats contemplated in the respective estimates, being different. In his report of 1805, he estimates the expense of building a 74-gun ship at $328,888, and that of building a gunboat, at $4 625. He also stated, the annual expense of a 74 in service at $192,500, and that of a gunboat in service at $7,000. According to this estimate, the building of one 74-gun ship would cost more than the building of seventy-one gunboats; and the annual expense of a 74 in service would be equal to that of twenty-eight gunboats. It may be observed here that the expense of building a 74, in this estimate, is believed to be much underrated. It is stated upon good authority, that one could not be built for less than $500,000, which would be sufficient to build one hundred gunboats at least. It is true the Secretary, during the present session, has estimated the expense of building a gunboat, he believed, at about $5,000, and the annual expense of one in service at $11,000. The difference in these estimates must, as has been stated, be supposed to arise from a difference in the kind and size of the boats, as some carry two guns and others only one—and in the manner of manning them, some being made much larger than others, and requiring a much greater number of men to man them. But suppose you could only keep in service twenty-eight or thirty gunboats, with the same expense necessary for one 74-gun ship, would it be contended that thirty gunboats would not contribute more to the defence of the country, than one 74? he presumed it would not. According to the opinion of the best informed on the subject, ten gunboats would force any ship of war from her moorings. But he did not deem it necessary to enter into a minute inquiry respecting the expense of gunboats; for, if they were really necessary for the defence of the country, the expense ought not to prevent them from building them; their object ought to be to afford to the nation the most efficient protection in their power, and whatever might be the necessary expense of the measures, adopted for that purpose, they would be cheerfully submitted to by the country.

Mr. C. said he could never agree to barter away the blood and liberty of American citizens for dollars and cents, and he hoped that such cold-blooded calculations would not be made at this time; they would not be prepared to account to their country for such conduct; they would be told by that country that they were ready to give "millions for defence, but not a cent for tribute." No, nor one cent towards humiliating concessions; nor would the American people shrink from any contest that might be rendered necessary in obtaining a just reparation for the injured, insulted rights and murder of their fellow-citizens. Some had objected to the number of gunboats proposed to be built. Mr. C. observed that if the authority was given to the President to build the number stated in the bill, that authority would not, he presumed, be exercised to the full extent, unless circumstances should render it necessary; or, if the number proposed should be built, they would not be called into actual service, except as occasion might require. Such part only would be manned as the exigency might render necessary; and the seamen of the United States ought to be organized into a marine militia, in all the seaport towns, for the purpose of manning those gunboats when called into actual service. By passing this law they put it in the power of the Executive to provide and call into service so many of those gunboats as he should think proper; not all at any one time, unless, indeed, the attack should be so general, or the danger so imminent as to render it necessary. The measure appeared to him to rest nearly on the same footing with that by which a power had been given to the Executive to call out the militia. They had by law authorized the President to call into actual service one hundred thousand militia, as occasion might require, and appropriated money to meet the expense that might be occasioned thereby. This expense, if the whole number were called into service, would be very great; but would gentlemen say, that because the expense would be very considerable, they would not direct them to be called into service when the safety and interest of the country required it? Certainly no man would venture to say so who was a friend to his country—for the whole power of the nation should be exerted to the utmost, when necessary, to repel any attack that might be made on any portion of its citizens. If, therefore, it can be shown that gunboats are the best means of defence in our power to procure, the expense ought not, and could not be a sufficient objection to building them. So much had already been said, for and against the efficiency of gunboats as a means of defence, that he did not propose to enter into a particular investigation of that part of the subject. He would however remark, that although he had attentively listened to those opposed to this system, in order to ascertain the grounds upon which they judged it inefficient, he had not heard any evidence advanced, either from the experimental knowledge of gentlemen themselves, from the experience of others, or from any other source, which in his opinion supported the doctrine they advocated. On the contrary, much evidence had been adduced to prove the efficacy of gunboats. This evidence had been derived from men of distinguished skill and information on this subject, from the experience of nations, and from the success of gunboats in many important actions against ships of war. It could hardly be necessary to remind the House

of the affair at Boulogne in 1801, when Lord Nelson, with thirty vessels of war, attacked the advanced guard of the French flotilla and was compelled to retire with great loss; and in a second attack made by him some days afterwards, he was equally unsucessful, and sustained much greater loss. The successful attacks of the gunboats at Algeziras on the British fleet, which was greatly superior to them in force, and how galling and distressing these attacks were considered by the British, will be recollected by all who have attended to the history of those times. The affair between the Turks and Russians, noticed in the President's Message, furnishes the strongest proof that could be required of the efficacy of gunboats. This case was in point—it was a trial of the power and success of gunboats opposed to vessels of war. It will not be supposed that the weight of this evidence is diminished by the little criticisms of the gentleman from Vermont (Mr. Elliot;) no man who has heard them will think so. They do not merit, nor will they, I presume, receive any notice on this floor; they will sink into obscurity, as the mere ephemeral effusions of embittered invective, unsupported by facts or reasoning. To these instances of the successful operations of gunboats, may be added, in support of their efficacy, the fact of their being brought into very general use, for defence, by all the northern Powers of Europe, as well as by the two great Powers, France and Great Britain. Mr. C. asked what stronger proof could be expected or required on this subject? They had the opinions of the higher officers of the Navy—men of experience and mature years—the opinions of General Gates, of Commodore S. Barron, and others, stated in the documents on their table. Were these not entitled to respect? Were not the successful operations of gunboats in the instances stated, and the general use of them by European nations, entitled to respect? Would gentlemen wish the Government to go to war, before the system was completely adopted, for the sole purpose of making experiments, to satisfy them of the efficacy of this mode of defence? Should this be done, those gentlemen might not choose to approach near enough to be spectators of the scene of action; and should the experiment prove successful, they would still have to rely on the information of others, or remain as faithless and incredulous in the efficacy of this mode of defence as they now were. But what has been advanced on the other side in opposition to this volume of evidence, to prove the inefficacy of this system of defence? Were these the opinions of men of experience? No. Was there a single instance adduced to the House in which a solitary individual of naval experience had given an opinion that gunboats were not calculated to answer the purposes for which they were intended, that of defending your coast and seaport towns, in aid of fortifications? He had heard none. These were only the mere speculative opinions of some gentlemen of this House, most of whom, probably, had never seen a gunboat, or if they had, like himself, never had been on board of one. No gentleman in the House had pretended to possess experimental knowledge on this subject. This was, then, the kind of evidence brought before the House to refute that arising from the experience and opinions of the first characters in your own country, as well as that of European nations. This was the true state of the question, and Mr. C. would submit it to the House and the nation, which scale in such a case ought to preponderate.

Mr. C. said he could not help noticing, before he sat down, some extraordinary and contradictory objections that had been made to this measure; some gentlemen complained that it was likely to be adopted in consequence of the influence which the opinion of the Executive in its favor had upon the members; others complained because the Executive had not laid before the House and recommended any particular system of defence. The House had been told by one gentleman (Mr. Elliot) that this measure, which had failed during the last session, was now about to be adopted, because it was recommended by the Executive, and was his favorite measure. If, however, the gentleman meant that this measure failed in this House during the last session, he must be mistaken. A bill passed this House last session for building gunboats and erecting fortifications, and so much of it as authorized the building of gunboats was struck out in the Senate. Another gentleman from Delaware (Mr. Van Dyke) complained bitterly that the President had not recommended the measure; he seemed to rest his objections to the bill upon the ground that the Executive had not openly and expressly recommended this or any other particular system of defence. Mr. C. said he would leave it to the candor of gentlemen to decide how consistent those objections were; and he would ask how those opposite grounds of objection to the conduct of the Executive could be reconciled? In such a case how is the President to act? Could there be a more conclusive proof of the correctness of his conduct than the different grounds upon which gentlemen complain of it. These prove incontestably that the Executive did not impose his opinions upon the House in a dictatorial style, but pursued such a course as furnished the House with all the information he possessed, as well as his own impressions on the subject, and left it with them to adopt such measures as in their judgment the situation of the country required.

The gentleman on his right (Mr. Dana) had observed on yesterday, when speaking on this subject, that this House had not in their possession the copies of any despatches received from our Ministers abroad, relative to our relations with foreign Powers.

No gentleman had yet stated that the House had received either original despatches or copies of despatches; the gentleman complained, however, that the House were not possessed of copies of despatches—and with what color of propriety was this complaint made? Mr. C. said, if they had the originals, copies were not necessary; and if there were no originals, they could not have copies. Had the gentleman shown or stated, that there were (in the power of the House) original

despatches, the copies of which he wished? If not, how could he demand, or complain for the want of copies? Can there be copies without the existence of originals? If the gentleman had no right to speak of or demand original despatches at this time, he could have no right to speak of copies. The gentleman had forcibly dragged his observations respecting copies of despatches into this discussion; it had no connexion whatever with the subject before the House. The gentleman would not pretend to say or insinuate, that there was the least reason to believe, the Executive possessed any important information in regard to our foreign relations, which had not been made known to the House. He felt satisfied this would not be alleged, because it could not be said with truth.

But, said Mr. C., I do not stand up in this House to vindicate the conduct of the Executive on this occasion. That is altogether unnecessary. His conduct will speak for itself, and defy the attempts of his enemies to impeach its correctness. Nor am I to be considered, in the remarks I have made on this occasion, as defending the Executive: he stands in need of no defence. His well known faithful and unremitted exertions, for more than thirty years, in support of the rights and liberties of the American people, will be his sure, his best defence, and will vindicate his character against the malevolent shafts of vindictive malice. So long as virtue, wisdom, and patriotism, continue to be revered in the world, so long will his character remain a distinguished monument of the triumph of liberty and the rights of man over despotism and aristocracy, around which the sons of freedom will rejoice to rally; when the memory of those who attempt to defame him, will have been forgotten, having vanished and become obscured by the superior lustre of his well-earned fame, like the feeble gleam of the glow-worm before the splendid glory of the noon-day sun.

Mr. C. said, he had reluctantly been led thus far by his feelings; for he must confess he could not hear repeated attempts made, unjustly and without cause, to defame the character of that great and good man, who had for many years conducted the nation by his sound and wholesome counsels in the walks of peace, and in whom the people of America had justly reposed the highest and still undiminished confidence, without feeling and expressing, in common with his fellow-citizens, that degree of indignant resentment which such conduct so justly merited.

Mr. DANA said, he had one favor to request of gentlemen of this House, that his own views on this subject might not be estimated by conjecture or want of knowledge. What availed it to him if any gentleman in the House could not discover his particular views? What availed it if gentlemen could not discern a good motive for his conduct? Would gentlemen claim the right of penetrating his heart and searching his motives? Was he obliged to explain his views to gentlemen who could not understand them? Mr. D. did not stand there to defend himself against assertions. But what were the gentleman's assertions more than his arguments? Where were the talents or honor that exalted that gentleman above others? Mr. D. descended not to vindication; he had never decried the freedom of deliberation; and, while he conformed himself to the rules of the House, he hoped to be allowed the privilege of expressing ideas, and his course of thinking; if his mind did not follow, obsequiously, those paths which gentlemen might point out, he hoped the House would, nevertheless, allow him to exercise his right.

If gentlemen wished to know why he spoke of despatches, he could repeat, that there was not in the possession of the House a copy of any despatches relative to the affair of the Chesapeake; if they had not in possession any document which could give them precise information on the subject, it was not to be expected that they could deliberate upon it; if this information was out of their possession, and in possession of the Executive, the whole course of proceeding rested with the Executive. Gentlemen need not say whether he had or had not censured Executive proceedings; for he had said nothing on that point, one way or the other. He did contend that, on that particular subject, they had no despatches before them; that the management rested entirely with the Executive. The question was not presented to the House, whether they would recede from the demands which had been made, or insist upon them further; it had not been sent to them for consideration, and therefore rested with the Executive. As the Executive magistrate had charge of foreign relations and the command of the whole public force, as this was a time of uncertainty and anxiety, and as the House had not the control of public affairs, Mr. D. was disposed to give to the Executive that kind of force which he understood him as strongly recommending, though not that which he himself preferred. Was it strange that, upon complex questions, some gentlemen should think fit to examine? Were they, indeed, required to vote without examination? When the subject of foreign relations was before them, could they not say, "I do not like this, I do not altogether approve of it, but, upon the whole, I will vote thus." Gentlemen might undertake to assign motives for his conduct, which, indeed, he scorned to answer. There was one broad ground on which he acted; he always weighed the reasons on one side of the question, against those on the other; and, on the side which preponderated, he never failed to vote. He was in that House discharging a public duty; and he endeavored, whatever were his prejudices, to act consistently with the nature of his trust. The present was a great question between his own country and a foreign Power; in a controversy of this kind, although he might not fully approve the conduct of Administration, he could not endure that any prejudice whatever should separate him from the cause of his country. In a case of this kind, where the Executive was the only organ of communication, he would vigorously guard himself from being seduced by any predilection whatever.

One other idea on this subject: while the aspect of the political horizon was serious, and called upon them, not merely to express an opinion, but to protect the permanent interest of the country, he deemed it of some moment to consider that, however divided on other points, on this they should be animated with one soul; that, said he, when we do strike, we may strike with one arm. Perhaps, a conviction of this might have led him to be more ready to vote for the bill on their table than it deserved. He did not think gunboats, of themselves, composed a proper defence; but, as this bill contemplated a subordinate part of a general system, he should vote for it.

Mr. Campbell said, he could assure the gentleman from Connecticut, that he had not established a court of inquisition for consciences. He had not impeached the motives of gentlemen, but had stated objects which they *might* have in view. I will, said he, assure the gentleman, and so will the House, that he has been incorrect in stating anything about despatches; and I can also assure him that I shall never use an equivocal expression to disclose more than is proper.

Mr. Quincy said he would not have risen now, but for an observation of the gentleman from Tennessee, as to speculative opinions. Mr. Q. had before not expressed his own opinion merely, but the opinion of men deeply interested and much experienced in this question. He could not boast of personal experience on the subject, but he had conversed with merchants and persons in naval employ, and he had found but one sentiment existed, that they might be useful, but not so much as to supersede the necessity of other modes. He recollected an observation made by a merchant deeply interested in the defence of our ports. When his opinion was asked, of the efficiency of gunboats, he said "you may have gunboats; but attempt to use them on our coasts, and you would soon not have a gun left on your boats." Much better would it be that these guns should be rested on carriages, and those distributed along the sea coasts. He had no objection to gunboats when contemplated to be used in shoal and narrow waters; but he must express an opinion against their efficiency in deep and rough waters, not from his own experience, but because it appeared to be the opinion of men skilled in naval affairs; and because the great mass of men interested in the defence of the ports were averse to this mode of defence. He should not vote for the bill, because he should, by so doing, abandon the best interests of the country; and because, when so large a sum was appropriated, it would seem that land batteries were to be proportionably neglected.

Mr. Randolph said, that so long as the details of the bill were under consideration, he had forborne to trouble the House with his sentiments, but now, on its final passage, he conceived himself entitled to express freely and fully his objections to it. His object was not to make proselytes, but to present to the House and to his country the grounds of his refusal to sanction the measure. When perhaps seventy or eighty speakers had repeatedly risen in its favor, it was surely reasonable that the few individuals opposed to it should be heard in their own behalf. He complained of the manner in which business had been conducted. Instead of a comprehensive system, the whole extent of which might be embraced by the House, measures had been laid before them piecemeal, and discussions of the most vague and unprofitable nature had grown out of them. So far from that general diffusion of information which was so desirable, they were totally destitute of and concerning the disjointed members which had been laid upon their table, and which he despaired ever seeing connected in one perfect whole. The deliberations which had arisen upon them defied analysis. It was a sort of Parthian warfare in which the difficulty lay not in vanquishing the enemy, but in coming up with him. He had not proceeded (as was alleged) upon his own speculative opinion. Experiment had proved the inadequacy of this species of armament. When the President of the United States issued his proclamation, commanding the British ships of war to retire from our waters, the want of adequate force alone could justify a failure to carry that proclamation into effect. A consciousness of his incapacity to enforce obedience to it, was notoriously one of the causes why Congress had been convened. Whosoever denied this must have the hardihood to charge the President with being deficient in his duty, which he presumed gentlemen were not prepared to do; and surely it was his bounden duty to enforce respect for the authority of the nation on those by whom it had been treated with derision and contempt. The British force remaining within our jurisdiction, in defiance of the laws, were as much an invading foe as if they had taken possession of the Capitol. The miseries of war had been feelingly depicted.

Mr. R. was as strong an advocate for peace as any gentleman on that floor; provided it were a safe and honorable peace. To his apprehension the arguments which had been urged would justify submission to any extent. He would ask if it was the duty of the Chesapeake to submit for the sake of peace, or to have resisted to the utmost of her strength? She was no more called upon by her duty to resist that attack, than the nation was now called upon to repel the attack which had been made upon her sovereignty. The obligation to resist was in both cases the same. Was any person disposed to applaud as a preserver of peace the unfortunate man of whom he should say no more than that he was not more bound to return the broadside of the enemy than Government were to expel their ships from our harbors after commanding them to depart. Much as he cherished peace, Mr. R. would be sorry to see it preserved by such forbearance; and it was only the inability to execute that could reconcile it for a moment to the feelings of the nation. The proclamation ought not to have been issued, or it should have been enforced. Let it not be supposed that he was an advocate for defence by forty-four gun frigates. Since the existence of their Navy the United States had lost two of their

stoutest ships to an enemy, and in both instances, without even a show of resistance. It was true that in one of these instances, the victor, as if in contempt, had thrown the worthless thing back upon our hands, instead of sending it where he wished it had gone, to Halifax, or to the bottom. An attempt to build a navy at this time would bring not relief but suffering. Mr. R. put little confidence in the regular navy, as it was called, which just sufficed to bait the war trap, or in the gunboats. Like the contemptible insects to which they had been compared by their advocates, it was hoped that they would find shelter in their insignificance, but if they should prove instruments of annoyance, eventually they would be turned against ourselves. He wished to see the public treasure employed in putting arms into the hands of all who were capable of bearing them, and in providing heavy artillery, not in the erection of a naval force, which, whether great or small, unless it too could retreat beyond the mountains, must fall into the hands of the enemy. If they wanted a force that should combine strength with simplicity, ready at all times for the public protection, they had such a force amply in their power.

If in the first instance he had no objection to his bill, a remark of his worthy friend from North Carolina, who had introduced it, would have determined Mr. R. to set his face against it. It was, that when the boats were built they were to rely upon a marine militia to man them; to cap the climax, a *marine militia!* But perhaps on this subject too they might be told that they were inexperienced and ought not to decide, for that men he most conversant with *marine militias* (but in what school he did not pretend to tell) pronounced them to be the best possible accompaniment to gunboats. There were two sorts of experience; that of an enlarged liberal, reflecting mind, possessing powers of high discrimination, capable of comparing objects in all their various relations to each other; and a little, petty, personal experience extending to a few matters of insignificant detail. Because a man had served on board a merchant vessel, whether in the forecastle or the cabin, did that entitle him to talk magisterially on systems of naval defence? Or, because he could box the compass, was he better calculated for the head of an admiralty than John Lord Spencer, who was probably destitute of that elegant accomplishment; but who, because he was a statesman, and not because he was an able-bodied seamen, had conducted the naval affairs of his country with a success and glory that might be equalled but never could be surpassed! What personal experience, so much relied upon, could our own Executive officers be supposed to have upon this subject?

Mr. R. hoped that those who were in favor of the bill, and whom he believed to be a large majority of the House, would excuse him if he could not vote for it on a principle on which he had ever refused to act, and would refuse as long as he should remain in public life. It was perfectly consistent and proper that gentlemen, who had always been the champions of Executive doctrines, and voted for measures because they emanated from a source which was the God of their idolatry, should support systems because they were ushered into the House in a particular way. These courtly doctrines had always been too refined for him—his deliberate approbation must accompany his vote. A strong objection to the bill in question, was the delusive views held out to the House, on the subject of its expense. It had been said that two hundred and fifty dollars per man would cover the whole cost, (he was informed that it would amount perhaps to four times that sum,) and not one third of the number of men necessary to navigate and fight the boats had been taken into the account; and it had been further urged that, as the boats would be in service not more than six months in the year, one half of the whole annual expense would be saved. Mr. R. asked if it was possible for such a statement to pass upon the most credulous and uninformed man in society. If they were laid up at the end of every six months, and the men discharged, was it not evident that new premiums, bounties, and additional clothing would be necessary at every new term of service? How absurd then to talk of a saving of one half, by employing them only during one half of the year. Besides, what was to become of our defence during the remainder of it? Surely if the boats were necessary in January, they would be so in June, and if wanting in June, they were equally so in January.

But it was whispered, out of doors, that these boats were not to be built. This, although at first sight it might seem to remove all his objections to the bill, would, if true, enhance his opposition to it, because it would lock up a vast sum of money from the necessities of the public, and tended to hang out lights of false security to the people.

If however negotiation was to precede measures of actual defence, and we possessed the power (as had been asserted) of driving the British squadron from our waters, but had magnanimously refused to exercise it, for the sake of preserving peace, he trusted that the departure of that squadron would be insisted on, as a preliminary to all further negotiation. A gentleman, whose opinions seemed to be almost oracular in that House, had dropt an expression, which threw great light upon the present state of our affairs. It was to this effect: that if the House were not in possession of any copies of despatches from our Ministers at London, they had seen all that the Executive had received on the subject of our negotiation there, from its commencement to its final close. [Mr. NICHOLAS here explained; he had said that all that had taken place, they had seen.] Mr. R. said, that the gentleman could have no reason to suppose that he was in any wise disposed to misunderstand him, but that he sat at the time almost in contact with the gentleman, and could distinctly hear him: his closing observation was (of which I believe I reminded him, when he resumed his seat) from its commencement to its final close. [Mr. N. said those were his words.]

If such then, said Mr. R. was the state of affairs, did it call for forbearance on our part of our indisputable rights, within our jurisdiction?

In the course of the observations, which he had thrown out, very much at random, on this subject, he had not conceived himself authorized, when speaking of the late outrage committed by Great Britain, to indulge in a strain of invective against the aggressor, as if that could wipe away the stigma attached to his own country. He knew that so far from vindicating the national honor by such conduct, he should but wound it more deeply. If we have war, said he, let us not deceive ourselves. We shall meet an enemy worthy of our arms—men of the same race, sprung from the same Anglo-Saxon stock; and let us not now tarnish our glory, if the God of battles should crown our efforts with success, or embitter our defeat, should the event be adverse, by stigmatizing with every epithet of contumely and contempt, the people against whom we shall have to contend.

The question was put on the passage of the bill, and decided in the affirmative—yeas 111, nays 19, as follows:

YEAS—Evan Alexander, Lemuel J. Alston, Willis Alston, jr., Ezekiel Bacon, David Bard, Joseph Barker, Burwell Bassett, William W. Bibb, William Blackledge, John Blake, jun., Thomas Blount, John Boyle, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, George W. Campbell, John Campbell, Peter Carlton, John Chandler, Martin Chittenden, John Clopton, Howell Cobb, Orchard Cook, Jacob Crowninshield, John Culpepper, Richard Cutts, Samuel W. Dana, John Dawson, Josiah Deane, Joseph Desha, Daniel M. Durell, John W. Eppes, William Findley, James Fisk, Meshack Franklin, Francis Gardner, Charles Goldsborough, Peterson Goodwyn, Isaiah L. Green, John Harris, John Heister, William Helms, James Holland, David Holmes, Benjamin Howard, Reuben Humphreys, Daniel Ilsley, Robert Jenkins, Richard M. Johnson, Walter Jones, James Kelly, Thomas Kenan, William Kirkpatrick, Nehemiah Knight, John Lambert, Joseph Lewis, jun., Edward St. Loe Livermore, Edward Lloyd, John Love, Robert Marion, William McCreery, William Milnor, Daniel Montgomery, jun., John Montgomery, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, John Morrow, Gurdon S. Mumford, Roger Nelson, Thomas Newbold, Thomas Newton, Wilson C. Nicholas, John Porter, John Pugh, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Matthias Richards, Samuel Riker, John Rowan, Lemuel Sawyer, Ebenezer Seaver, James Sloan, Dennis Smelt, John Smilie, Jedediah K. Smith, Samuel Smith, John Smith, Henry Southard, Clement Storer, Lewis B. Sturges, Peter Swart, Samuel Taggart, John Taylor, David Thomas, John Thompson, George M. Troup, Jabez Upham, James I. Van Allen, Nicholas Van Dyke, Archibald Van Horne, Killian K. Van Rensselaer, Jesse Wharton, Robert Whitehill, Isaac Wilbour, Marmaduke Williams, Alexander Wilson, Richard Winn, and James Whitehill.

NAYS—Epaphroditus Champion, Matthew Clay, John Davenport, jun., James Elliot, William Ely, James M. Garnett, Edwin Gray, William Hoge, Nathaniel Macon, Josiah Masters, Jonathan O. Mosely, Timothy Pitkin, jun., Josiah Quincy John Randolph, John Russell, Richard Stanford, William Stedman, Benjamin Tallmadge, and Abram Trigg.

Resolved, That the title be, "An act to appropriate money for providing an additional number of gunboats."

MONDAY, December 14.

DANIEL CLARK, the Delegate from the Territory of Orleans, appeared, produced his credentials, was qualified, and took his seat in the House.

The SPEAKER laid before the House a report from the Secretary of State, on a Message from the President of the United States, of the sixth of February, in the present year, transmitting a memorial of the French Minister, relative to the claim of Amelie Eugenie de Beaumarchais, legal representative of the late Caron de Beaumarchais; which was read, and, together with sundry documents accompanying the same, referred to the Committee of Claims.

Mr. BLOUNT moved that the House go into a Committee of the Whole on the bill for fortifying our ports and harbors. At the request of Mr. QUINCY, Mr. B. withdrew his motion for a few minutes

BOSTON MEMORIALS.

Mr. QUINCY presented twenty-two memorials, signed by nine hundred merchants, &c. of the town of Boston, praying for the modification, suspension, or repeal of a law commonly called the non-importation law; which he moved to be referred to the Committee of the Whole to whom was referred the bill to amend the non-importation law.

On this motion the yeas and nays being called, a debate of four hours length took place, in which Messrs. ELY, UPHAM, TAYLOR, SLOAN, GARDENIER, GARDNER, CROWNINSHIELD, BACON, QUINCY, ELLIOT, COOK, MACON, W. ALSTON, and HOLLAND, advocated the motion; and Messrs. DESHA, RHEA, G. W. CAMPBELL and MUMFORD opposed it. [This debate was rather desultory, and nearly retraced the same ground that was taken on the motion for reference of a petition on the same subject from the merchants of Philadelphia. We merely give a brief sketch of a few speeches which may serve to give a general view of the arguments of gentlemen on each side of the question.]

Mr. RHEA did not know anything of the subscribers to the petition, nor should he say anything derogatory to their characters. He admitted the right of petitioning in its full extent, but at the same time thought the House might exercise the right of judging of the propriety of referring petitions after they were considered. As for this petition, Mr. R. considered it a counterpart of the Philadelphia memorial, though in rather a different shape; the first memorial on the subject prayed for a total repeal, this for a modification, suspension, or repeal. These two points of modifying or suspending might make it go down better; but would gentlemen say that it did not contain the same principles? Or that the same consequences would not ensue from a reference of one as from a reference of the other? Whilst this or any other

petition (it was immaterial to him what or who were the signers) conveyed a prayer for the repeal of the non-importation law at this time, he should vote against its reference. He considered one memorial as much invading the dignity of the nation as the other: it still contained the odious word repeal, although it talked of modification; he hoped the House would express their opinion in as strong a manner on this as they had on the other. These merchants stated that they would receive injury from this law's going into operation; that they had expected it would be further suspended, and in consequence of that opinion had ventured their property. This was as much as to say, what had once been done, they must of course do again; and if they had done wrong yesterday, it should be a reason for doing so to-day; if the non-importation law had been once suspended, it must of course be further suspended. These merchants knew the day when this law would go into operation; and they might have considered themselves bound by the laws of the United States, and not by our relations with England. The mere opinion of any body of men was of no weight when balanced against the interests of the whole country; and if the opinion of any particular section of the Union would hold good as a reason why a law should be repealed, the country would soon be without law. It gave Mr. R. pain to make any observations on the subject; but he hoped the House, acting with the same firmness as on a former occasion, would make the same decision. For he did pronounce, that if they did refer this petition, it would be reiterated from ten thousand mouths, from one end of the Union to the other, and thence across the Atlantic, that the Congress of the United States were deliberating whether they would now repeal the non-importation law. It might even have an influence on our existing negotiations, which appeared—he did not know how, at the present time. He hoped that the reference would not be agreed to, but the memorial would be suffered to lie on the table.

Mr. BACON said that though he had voted against the reference of the memorial from the merchants of Philadelphia, he thought he could consistently vote in favor of the reference of this; and he would briefly state why he should do it. 1st. As to the manner: there was a material difference in the terms and language of the two petitions; their general aspect would at the first blush appear to every gentleman to be extremely different. 2nd. As to the object: the sole and exclusive object of the Philadelphia memorial was an absolute repeal of the law; under the present circumstances of the country that was a proposition to which the House should not for a moment lend their ear; this did not apply to the present memorial, which prayed for a modification, suspension, or repeal. 3d. As to time: when the former memorial was presented, the House had not the subject under consideration; they had now taken it up, and a bill was actually reported and referred to a Committee of the Whole to modify the law so as to make its provisions more equal. For these reasons he thought the present memorials should be referred, and that gentlemen who voted against referring the former memorial could with consistency vote in favor of a reference of this.

Mr. QUINCY said he was not astonished at the opposition which was made to a reference of this memorial; for after what had taken place on a former occasion, he did expect some difficulty would be experienced in the reference of this; he had however hoped that every gentleman in the House, after he had taken into consideration the effects of this law, after he had considered the real interests and rights of the citizens of this country, after he got rid of first impressions of resentment proceeding from an opposition to a favorite measure, would have consented to refer not only this, but also the Philadelphia memorial. He conceived that the decision on that memorial was dishonorable to the House; and that it was a treatment of those petitioners such as men and as citizens they had no right to expect. The right of the citizens of this country to petition was undoubted; and the right to have their petition heard, and referred to some organ of the House, was essentially connected with the Constitutional right to petition. A gentleman had said that it was a sufficient consideration of a petition to lay it on the table; it might lie there. Mr. Q. said, among other papers, but it would be paying no attention to it; it would not be absolutely shutting the door in the petitioners' face, but it would be a permission only to throw their petition on the threshold, where it could not come before the House. He conceived that the people only exercised their Constitutional privilege, when they told the House that it would be wise to repeal this law; and he did not hold the opinion that, in a country like this, the citizens were bound to restrain their petitions against the operation of any law. The several branches of the Government should receive wisdom from all sources; and always accept it when offered in language respectful and decorous.

There were marked differences between this memorial and that from Philadelphia; one was, that this prayed not only for a repeal, but for modification, and that the subject of modification was now specially before a committee of the House; not that he admitted, if these merchants had chosen to confine their prayer to a repeal only, that the House would have had a right to throw it on the table, and pay no further attention to it. They might listen to the prayer of a petition or not, but it was their duty to place it before some organ of the House. The true reason for an opposition to the reference of this petition was that offered by the gentleman from Tennessee, (Mr. RHEA,) that it contained the odious word repeal. The repeal of the law was a measure on which they would not even hear their own citizens; the gentleman would not contemplate it for a moment; it was his wish that they should not refer a memorial which had that word in it. Mr. Q. asked, was it not every day's practice for a man upon whom laws operated, and whom they particularly affected, to come by petition to the House, and state objections to particular measures? All laws were experimental originally; they sometimes wholly

failed, and sometimes partially only: unexpected results would happen, and those affected had a Constitutional right to be heard upon their grievance. But it appeared that this non-importation law was a choice weapon, intended to operate on a foreign Government, and everything which had a tendency to show that it was injurious to our own citizens had a tendency to render it unpalatable to the people at large. This was the real and great evil: they had imposed an offensive measure on a particular class of citizens, the merchants; they tell you, said Mr. Q., that it galls them, and will injure and oppress them. Had they then asked for anything improper? They had asked for a modification, suspension, or repeal of the act: and if they referred this memorial to a committee they would thus place before it the consideration of each part of the prayer.

But it might be said, and was said the other day, that it was not patriotic to complain; and it seemed as if suffering under this act was to be the standard of patriotism in this country. If it were true that this act pressed hard on any class of citizens, should their patriotism prevent them from complaining of it? If any felt that, from the nature of the instrument, it was such as would inevitably injure our own citizens, should they not state it? Much ado had been made and a great deal had been said about the repeal of what his colleague had called a wise act, and in which he had said there need be no difficulties; gentlemen had now on their desks a letter from the Secretary of the Treasury, stating difficulties which rendered its operation extremely embarrassing, and which it was necessary to modify. By the tenor of that law, they had shown a mistrust of the integrity of a class of people on whom depended a great portion of the revenues of the United States. No nation in the world possessed a body of merchants so pure as those of this country, as to frauds on the revenue; look at the last statement of the small number of fines incurred; look at the small number of frauds committed: there was not, to the honor of our merchants, an instance in all history exhibited of so small a number. Let these merchants see that their prayers were not heard; let the ideas of the gentleman from Tennessee prevail; let a number of merchants under those calculations of probabilities which merchants ought to make, be ruined, and a general disgust would ensue.

An observation had been made on a former occasion by a gentleman from Maryland, which it seemed to Mr. Q. proper to notice. The idea was, that it had been said that this law would not be carried into operation; and that it should be enforced to contradict these predictions. Was this a ground on which to legislate? It was well known that all men would differ on great questions; that gentlemen on this floor from the seacoast might differ on some points with those from the westward; but if people had chosen to express opinions through the medium of newspapers, was that to influence them as reasons for not repealing this law? If upon inquiry the law should be found injurious to our own citizens only, would not the House repeal it? He did not say this was the case, but merely stated the case to show the impolicy of not referring this because it contained the odious word repeal.

It was a principal objection to the non-importation law, that it had been adopted for a political object, and not as a commercial regulation. It was a sound objection to it, that it was a piece of artillery which would certainly do injury by recoiling, though it might not hit the object to which it was directed; recoiling always first; the oppression of the law being first felt in our own country, and evil always attending its operation. Was there then anything contrary to patriotism, was it in any way improper for merchants who saw these effects and felt these evils, to say, "do what you please with your enemies, but do not sacrifice us; in destroying your enemies do not let us perish with them." Was there any impropriety in their praying a repeal of the law? These effects were such as wise men had anticipated, and what no honorable or good man need be ashamed to avow. Gentlemen might say to these merchants, "if we injure you it is unintentionally; the blow was not intended for you." Gentlemen from Kentucky and Tennessee tell them "be resigned; the blow does not affect us, although it may limit your operations or destroy your business, therefore you must not open your lips." Merchants would petition Mr. Q. said; and if the law had that operation which was anticipated, they would apply till their prayers were effectual; but if they could get through these difficulties, they would be satisfied; they were a class of men who wished no sacrifices of the public interests.

Gentlemen had said on various occasions "let us have union;" nothing was more desirable. Let gentlemen show that they were willing to be united by yielding their prejudices; hear what the merchant said of the operation of this law, and examine how it bore upon them. How was it expected that individuals could be united to the Government which would not hear their petitions, but threw them on the table?

The gentleman from Tennessee had intimated that the language of this petition was such, the terms so adapted, that the petitioners "presumed it would go down," to use his own words; as if that petition was intended to gain something from the House which had been refused to others, by an artful concealment of terms. Mr. Q. could say, from his own knowledge, that when this memorial was draughted, there had been no knowledge in the town of Boston that the memorial from the city of Philadelphia had been refused a reference. The object of the memorial was not to obtain from the House what they had refused to others, but to receive from the National Legislature what it was their duty to give. He should trouble the House no farther on this occasion; but hoped that the refusal of the Philadelphia memorial would have no influence upon the reference of this, as there was a committee now appointed who had the very subject of the petition under consideration.

The yeas and nays being taken on the motion for reference stood—yeas 79, nays 38, as follows:

YEAS—Lemuel J. Alston, Ezekiel Bacon, Joseph Barker, William W. Bibb, John Boyle, John Campbell, Peter Carlton, Epaphroditus Champion, Martin Chittenden, John Clopton, Howell Cobb, Orchard Cook, Jacob Crowninshield, John Culpepper, Richard Cutts, Samuel W. Dana, John Davenport, jun., Josiah Deane, James Elliot, William Ely, William Findley, Barent Gardenier, Francis Gardner, Charles Goldsborough, Edwin Gray, John Harris, John Heister, William Hoge, James Holland, David Holmes, Reuben Humphreys, Daniel Ilsley, Robert Jenkins, James Kelly, William Kirkpatrick, Nehemiah Knight, John Lambert, Joseph Lewis, jun., Nathaniel Macon, Robert Marion, William McCreery, William Milnor, Daniel Montgomery, junior, Nicholas R. Moore Thomas Moore, Jeremiah Morrow, Jonathan O. Mosely, Thomas Newbold, Thomas Newton, Wilson C Nicholas, Timothy Pitkin, jun., John Porter, John Pugh, Josiah Quincy, John Randolph, John Rea of Pennsylvania, Jacob Richards, Matthias Richards, John Russell, James Sloan, Dennis Smelt, John Smilie, John Smith, Richard Stanford, William Stedman, Clement Storer, Lewis B. Sturges, Peter Swart, Samuel Taggart, Benjamin Tallmadge, John Taylor, John Thompson, Jabez Upham, James I. Van Allen, Philip Van Cortlandt, Nicholas Van Dyke, Killian K. Van Rensselaer, Isaac Wilbour, and Alexander Wilson.

NAYS—Evan Alexander, Burwell Bassett, William Blackledge, John Blake, jun., Thomas Blount, Robert Brown, William Butler, Joseph Calhoun, George W. Campbell, John Chandler, Matthew Clay, Joseph Desha, John W. Eppes, Meshack Franklin, Peterson Goodwyn, Isaiah L. Green, Benjamin Howard, Richard M. Johnson, Walter Jones, Philip B. Key, John Love, Josiah Masters, John Montgomery, John Morrow, Gurdon S. Mumford, John Rhea of Tennessee, John Rowan, Lemuel Sawyer, Ebenezer Seaver, Jedediah K. Smith, Samuel Smith, David Thomas, Archibald Van Horne, Jesse Wharton, Robert Whitehill, Marmaduke Williams, Richard Winn, and James Witherell.

This memorial being disposed of, it being near four o'clock.

Mr. BLOUNT moved, that the House now resolve itself into a Committee of the Whole on the bill for erecting fortifications, &c. He made this motion with a confident expectation, that the House, having spent so much time on a subject of so importance, would now go into Committee, and sit till they went through this bill, which was of so much importance.

This motion was negatived—55 to 46.

TUESDAY, December 15.

A member in his place, to wit: Mr. BACON, of Massachusetts, suggested an error in the Journal of this House, of the fourth day of the present month, by an omission to state in page one hundred and thirty-four, that a division of the question on an amendment proposed by Mr. EPPES, had been called for and taken; and thereupon moved that after the words "as before recited," in the page before mentioned, an entry be made to read as follows:

"A division of the question on the said motion to amend, was called for, and thereupon, the question being taken that the House do agree to the first member of the said amendment, to wit: for striking out the words "*the whole body of the militia of the United States;*"

"It passed in the negative—yeas 48, nays 78.

"The yeas and nays being demanded by one-fifth of the members present,

"Those who voted in the affirmative, are,

"Willis Alston, junior, Ezekiel Bacon, David Bard, Joseph Barker, John Blake, jun., Robert Brown, Joseph Calhoun, Peter Carlton, Orchard Cook, Jacob Crowninshield, John Culpepper, Richard Cutts, Ezra Darby, Josiah Deane, John W. Eppes, William Findley, James Fisk, Francis Gardner, Isaiah L. Green, John Heister, James Holland, Reuben Humphreys, Daniel Ilsley, Robert Jenkins, Nehemiah Knight, John Lambert, John Love, Josiah Masters, William Milnor, John Montgomery, Jeremiah Morrow, Gurdon S. Mumford, Wilson C. Nicholas, Matthias Richards, Samuel Riker, Ebenezer Seaver, James Sloan, John Smilie, Jedediah K. Smith, Henry Southard, Clement Storer, Peter Swart, David Thomas, James I. Van Allen, Philip Van Cortlandt, Robert Whitehill, Isaac Wilbour, and Marmaduke Williams.

"Those who voted in the negative, are,

"Lemuel J. Alston, Burwell Bassett, William W. Bibb, Thomas Blount, John Boyle, William A. Burwell, William Butler, George W. Campbell, John Campbell, Epaphroditus Champion, John Chandler, Martin Chittenden, Matthew Clay, John Clopton, Howell Cobb, Samuel W. Dana, John Davenport jun., John Dawson, Joseph Desha, James Elliot, William Ely, Meshack Franklin, Barent Gardenier, James M. Garnett, Peterson Goodwyn, Edwin Gray, John Harris, William Helms, William Hoge, David Holmes, Benjamin Howard, Richard M. Johnson, Walter Jones, James Kelly, Thomas Kenan, Philip B. Key, William Kirkpatrick, Joseph Lewis jun., Edward Lloyd, Matthew Lyon, Nathaniel Macon, Robert Marion, William McCreery, Daniel Montgomery, jun., Nicholas R. Moore, Thomas Moore, John Morrow, Roger Nelson, Thomas Newton, Timothy Pitkin, jun., John Porter, John Pugh, Josiah Quincy, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, John Rowan, John Russel, Lemuel Sawyer, Dennis Smelt, Samuel Smith, John Smith, Richard Stanford, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, Abram Trigg, George M. Troup, Jabez Upham, Nicholas Van Dyke, Archibald Van Horne, Killian K. Van Rensselaer, Jesse Wharton, David R. Williams, Alexander, Wilson, Richard Winn, and James Witherell.

"And on the question recurring, that the House do agree to the last member of the said amenement, to wit: for inserting the words '—— thousand of the militia of the United States, and for arming annually hereafter —— thousand, until the whole body of the militia of the United States shall be armed;' it was declared by the Chair, and so decided, that this part of the amendment failed of course, and that it was not in order to put the same."

And on the question that the said Journal of the fourth instant be so amended, it was resolved in the affirmative.

PHILADELPHIA MEMORIAL.

Mr. MILNOR moved that the memorial of the merchants and traders of Philadelphia, praying for a repeal of the non-importation act, be referred to the Committee of the Whole to whom was referred the bill, reported by the Committee of

Commerce and Manufactures, supplementary to the non-importation act, and to whom the Boston memorial was also referred.

The memorial being read by the Clerk,

Mr. Upham said that in the course of the debate yesterday, on the motion of his colleague to refer the petition of the merchants of Boston to the Committee of the Whole, who had under consideration the bill amendatory of the non-importation law, he observed that the House, consistently with their vote the other day as to the disposition of the petition of the Philadelphia merchants, might then, on motion, refer it to the Committee. He observed that he was yet of the same opinion. If gentlemen would consider what the vote was as to the Philadelphia petition, he presumed they would agree with him.

The decision of the House was not to reject the petition, but that it should lie on the table. And some gentlemen then urged as a reason why it should be ordered to lie on the table, that the non-importation law was not under consideration, and probably soon would be, as the time when it would go into operation was very nigh; and if permitted to take effect would require amendment.

Since the debate upon the motion as to the Philadelphia memorial, and the vote that took place upon it, the chairman of the Committee of Commerce and Manufactures had introduced a resolution, resolving that said committee should be instructed to take into consideration the propriety of amending the aforesaid law, and report by bill. That a bill had been reported and committed to the Committee of the Whole. Since the subject was now under consideration, he observed there could be no inconsistency in those gentlemen who voted the other day that the petition should lie on the table, now voting that it should be referred to this committee. But as to any difference between the memorial of the merchants of Philadelphia, and that from those of Boston, in substance, there was none, either as it respects the language in which it was clothed, or the object in view. It certainly did not appear to him consistent with common sense to attempt to make any. It must be evident that the motive and purpose in both were the same. The former was manly, dignified, and at the same time respectful language—sufficiently so as to satisfy him. He had no idea of citizens under a Government like ours humiliating themselves. He did not wish them even to cringe. It was sufficient if they expressed themselves in decent language. As to the object, as he had before said, it was the same. But the merchants of Philadelphia had as good a right to petition for the repeal of a law, as the merchants of Boston had for the repeal, suspension, or modification of a law.—Nothing could be more ridiculous than to endeavor to make a distinction as to this. It would, as was said by the gentleman from North Carolina, in the debate of yesterday, be a strange decision of this House, should it determine that a petition, couched in decent terms, should not be committed, because it asked for the repeal of a law. Is the House prepared to establish such a precedent? Petitions praying for repealing laws were daily prefered, and as often referred. How often are memorials from soldiers in the Revolutionary war presented, praying that the statutes of limitation, so far as they interfere with their claims, may be repealed. Did the House ever refuse to commit such a petition?

Again, the Constitution, it is allowed, gives the people a right to petition Congress. This right gentlemen hesitate not to concede. But they say they are not obliged to examine their petitions. They are not obliged to commit them! They do hear them when they are read!

It certainly is a contradiction to allow them the right to pray, and to deny them the right to have their prayers heard and considered. The right is as unimportant and vain as was the boasted power of Owen Glendower in the play. He would call spirits from the vasty deep. The spirits to be sure would not come. We republicans have a right to petition Congress for the redress of our grievances, and we boast of this right. But it seems we have no right to be heard.

As, sir, the non-importation law is now before the Committee of the Whole, the repeal of which is requested by this petition, as this petition is in decent language, and as in substance and common sense it cannot in motive or purpose be distinguished from that of the merchants of Boston, which was yesterday committed to this Committee, I hope the motion of the gentleman from Pennsylvania will prevail, and this petition will also be committed. The Committee will then have the whole subject, with all the memorials touching it, before it, and will dispose of it in such manner as after proper investigation it shall deem fit.

I am confident the House is not afraid to trust itself in committee to deliberate upon the question of repealing this law, with all the arguments in favor of this repeal, suggested by these memorials.

Mr. Chittenden.—I am very much at a loss to discover the reason why gentlemen should be opposed to the reference of the memorial of the merchants and traders of Philadelphia, praying for a repeal of the non-importation act, unless it arises from a want of confidence in their own firmness. Agreeing to the reference, is only saying, what I think we ought always to say, that we will hear the petitions of our citizens when they are decently expressed. It pledges no member of this House to grant the prayer of the memorialists, unless he should be convinced of the propriety of the measure. After the reference of the Boston memorial to the Committee of the Whole to whom was referred the act entitled an act supplementary to an act entitled an act to prohibit the importation of certain goods, wares, and merchandise, I could not have supposed a single objection would arise in the mind of any honorable gentleman against the reference of the Philadelphia memorial to the same Committee of the Whole.

Several honorable gentlemen have endeavored

to make a distinction between the two petitions, which would justify the different treatment which they appear desirous those petitioners should receive. How well they have succeeded in this attempt the House will judge.

But, sir, it is impossible for me to discover such difference. It could not be expected that exactly the same words and expressions should be contained in each of those memorials; but it is evident that the real object of both is precisely the same, which is the repeal of the non-importation act. This is a subject on which the people have an undoubted, a Constitutional right to petition, and of course to be heard—a right which I will never refuse to any class of citizens whose petitions shall be expressed in decorous language. We have been told that those petitioners have been treated with respect—that their memorial having been read is suffered to lie on the table. Is this the amount of our boasted privilege of petitioning the Government for the redress of grievances? I hope not, sir; and I would call the attention of the House to this subject by a reference to the indignant feelings excited in this country previous to the Revolution by a similar treatment of their petitions preferred to the British Government. We are likewise told that the Boston memorial mentions a modification as well as a repeal of the non-importation act, and the subject of modification being now before a Committee of the Whole, renders it proper that the Boston memorial should be referred; but the Philadelphia memorial praying for a repeal of the act, and no proposition being before the House for the total repeal, that this memorial ought to receive no attention from this honorable House. But, sir, if Congress are to point out the proper subject, the mode, and the precise time, when it shall be proper for citizens to petition, and that every petition, the prayer of which does not accord with their feelings, is to be instantly rejected, our boasted right of petitioning is hardly worth enjoying.

I have always considered that every citizen in a free Government had a right to address the National Legislature, provided their addresses were expressed in decent terms, and that it was the duty of the Legislature to give them a due consideration, and then decide as to the propriety or impropriety of granting the prayer of such petition. This memorial being prefered by a very large and respectable portion of the citizens of Philadelphia, presenting to this House a subject proper for their consideration, and expressed in the respectful, decorous, and manly language of freemen, induces me to believe that it will be treated with the same respect as the memorial of the citizens of Boston. Therefore, as I respect the honor of my country, the honor and consistency of this House, and particularly the honor of the Government under which we now act, I am strongly induced to hope it will be referred to the same Committee.

Mr. CHANDLER said a few words against the motion. The memorial was already in possession of the House, and if they rejected the present motion, he did not conceive it amounted to a rejection of the petition, as the House might dispose of it otherwise, and they had a right to do what they pleased with it.

Mr. ELY was rising to speak, when

Mr. GARDENIER called for the previous question, viz: Shall the main question be now put? As no debate is allowed on this motion, the question was immediately taken by yeas and nays, and resolved in the affirmative—yeas 64, nays 52, as follows:

YEAS—Evan Alexander, Willis Alston, jr., David Bard, Burwell Bassett, William W. Bibb, John Blake, jr., George W. Campbell, Epaphroditus Champion, Martin Chittenden, Matthew Clay, John Clopton, John Culpepper, Samuel W. Dana, John Davenport, jr., Joseph Desha, William Ely, William Findley, Francis Gardner, James M. Garnett, Charles Goldsborough, Edwin Gray, John Harris, John Heister, William Hoge, David Holmes, Robert Jenkins, Richard M. Johnson, James Kelly, Thomas Kenan, Philip B. Key, William Kirkpatrick, Joseph Lewis, jr., Edward St. Loe Livermore, Edward Lloyd, Robert Marion, William Milnor, Daniel Montgomery, jr., Thomas Moore, Jeremiah Morrow, John Morrow, Jonathan O. Mosely, Thomas Newbold, Wilson C. Nicholas, Timothy Pitkin, jr., Josiah Quincy, John Randolph, John Rea of Pennsylvania, Jacob Richards, Matthias Richards, John Rowan, John Smilie, John Smith, Richard Stanford, William Stedman, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, John Taylor, John Thompson, Abram Trigg, Jabez Upham, Philip Van Cortlandt, Killian K. Van Rensselaer, and Robert Whitehill.

NAYS—Ezekiel Bacon, Joseph Barker, William Blackledge, Thomas Blount, John Boyle, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, Peter Carlton, John Chandler, Jacob Crowninshield, Richard Cutts, John Dawson, Josiah Deane, Daniel M. Durell, James Fisk, Meshack Franklin, Barent Gardenier, Peterson Goodwyn, Isaiah L. Green, William Helms, James Holland, Benjamin Howard, Reuben Humphreys, Daniel Ilsley, Walter Jones, Nehemiah Knight, John Lambert, Matthew, Lyon, Josiah Masters, William McCreery, John Montgomery, Nicholas R. Moore, Gurdon S. Mumford, Thomas Newton, John Rhea of Tennessee, Lemuel Sawyer, Ebenezer Seaver, James Sloan, Jedediah K. Smith, Samuel Smith, Henry Southard, Clement Storer, Peter Swart, David Thomas, George M. Troup, James I. Van Allen, Isaac Wilbour, Alexander Wilson, and James Witherell.

Mr. ELY inquired of the Speaker what was the effect of the vote which had been just taken; whether by deciding the previous question affirmatively, to wit, that the main question be now put, all further debate on the main question was precluded?

The SPEAKER replied that, in his opinion, no debate could be allowed on the main question, but a decision must be immediately made.

Mr. RANDOLPH observed, that it was with reluctance he questioned the opinion of the Chair, but he felt himself compelled to appeal from that decision to the House, and made a motion to that effect.

On this motion ensued a debate, which continued above three hours. It turned on the ques-

tion, whether the Speaker had correctly interpreted the rule of the House relative to the effect of the previous question. The decision of the Speaker was supported by Messrs. Thomas, G. W. Campbell, and Alston; and opposed by Messrs. Randolph, Alexander, Quincy, Smilie, Dana, and Dawson.

The Speaker said he should be happy to hear the observations of any gentleman on the import of the word *now*, as it occurs in the form of the previous question, viz: Shall the main question be *now* put?

Mr. Randolph said, he rose to assist the Speaker, according to his request, relative to the meaning of the word *now*. Nothing could be plainer. It meant *at this time*. It implies that the main question shall be immediately put, but though the question is to be immediately put, yet it is competent for any member, as in other cases, to rise and debate the subject. The question before the House was on the meaning of words; it was a question of language; and if any gentleman was sensible of his incapacity to decide it, let him, if he pleases, send to the library after Horne Tooke, &c., where he may find an explanation of all such words as if, and, until, now, &c.

Mr. Pitkin, after sundry observations, moved a postponement till to-morrow, that members might have time to examine the subject, as it was new, and of considerable importance. The speakers on this motion were Messrs. Thomas, Rhea, Masters. Alston, Quincy, Gardner, Alexander, and Randolph.

Mr. Alexander inquired if the motion to postpone was in order; to which the Speaker replied that it was.

Mr. Randolph then demanded the yeas and nays on the question of postponement. If the subject was postponed till to-morrow, there would, he said, be on record a solemn affirmation of the House that *now* might mean *to-morrow*.

The motion to postpone the question on the correctness of the Speaker's decision till to-morrow was lost—yeas 48, nays 69, as follows:

Yeas—Evan Alexander, Willis Alston, jun., Ezekiel Bacon, David Bard, Burwell Bassett, William Blackledge, John Blake, jun., George W. Campbell, Peter Carlton, Matthew Clay, Jacob Crowninshield, John Culpepper, Richard Cutts, Samuel W. Dana, Josiah Deane, William Findley, James Fisk, John Heister, James Holland, Reuben Humphreys, Daniel Ilsley, Nehemiah Knight, John Lambert, John Love, Robert Marion, Josiah Masters, John Montgomery, Nicholas R. Moore, John Morrow, Thomas Newton, Wilson C. Nicholas, Timothy Pitkin, jr., John Porter, Matthias Richards, Lemuel Sawyer, Ebenezer Seaver, James Sloan, John Smilie, Jedediah K. Smith, Henry Southard, Clement Storer, Peter Swart, John Taylor, David Thomas, John Thompson, Robert Whitehill, Isaac Wilbour, and James Witherell.

Nays—William W. Bibb, Thomas Blount, John Boyle, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, Epaphroditus Champion, Martin Chittenden, John Clopton, Howell Cobb, Orchard Cook, John Davenport, jr., John Dawson, Jos. Desha, Daniel M. Durell, James Elliot, William Ely, Meshack Franklin, Barent Gardenier, Francis Gardner, James M. Garnett, Charles Goldsborough, Peterson Goodwyn, Isaiah L. Green, John Harris, William Helms, William Hoge, David Holmes, Benjamin Howard, Robert Jenkins, Richard M. Johnson, Walter Jones, James Kelly, Philip B. Key, William Kirkpatrick, Joseph Lewis, jr., Edward St. Loe Livermore, Edward Lloyd, William McCreery, William Milnor, Daniel Montgomery, jr., Thomas Moore, Jonathan O. Mosely, Gurdon S. Mumford, Thomas Newbold, Josiah Quincy, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, John Russell, Dennis Smelt, Samuel Smith, John Smith, Richard Stanford, William Stedman, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, Abram Trigg, George M. Troup, Jabez Upham, James I. Van Allen, Philip Van Cortlandt, Archibald Van Horne, Killian K. Van Rensselaer, Alexander Wilson, and Richard Winn.

The question then recurred, Is the decision of the Chair in order? The speakers on this motion were Messrs. Taylor, Bibb, and Blount. After more than three hours' debate, the question was decided against the Speaker—yeas 14, nays 103, as follows:

Yeas—Willis Alston, junior, David Bard, Burwell Bassett, William Blackledge, George W. Campbell, Orchard Cook, Daniel Ilsley, Josiah Masters, John Rhea of Tennessee, Lemuel Sawyer, John Smith, Clement Storer, David Thomas, and Robert Whitehill.

Nays—Evan Alexander, Ezekiel Bacon, Joseph Barker, William W. Bibb, John Blake, jun., Thomas Blount, John Boyle, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, Epaphroditus Champion, John Chandler, Martin Chittenden, Matthew Clay, John Clopton, Howell Cobb, Jacob Crowninshield, John Culpepper, Richard Cutts, Samuel W. Dana, John Davenport, junior, John Dawson, Josiah Deane, Joseph Desha, Daniel M. Durell, James Elliot, William Ely, William Findley, James Fisk, Meshack Franklin, Barent Gardenier, Francis Gardner, James M. Garnett, Charles Goldsborough, Peterson Goodwyn, Edwin Gray, Isaiah L. Green, John Harris, John Heister, William Helms, William Hoge, James Holland, David Holmes, Benjamin Howard, Reuben Humphreys, Robert Jenkins, Richard M. Johnson, Walter Jones, James Kelly, Thomas Kenan, Philip B. Key, William Kirkpatrick, Nehemiah Knight, John Lambert, Joseph Lewis, junior, Edward Lloyd, John Love, Robert Marion, William McCreery, William Milnor, Daniel Montgomery, junior, John Montgomery, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, John Morrow, Jonathan O. Mosely, Gurdon S. Mumford, Thomas Newbold, Thomas Newton, Wilson C. Nicholas, Timothy Pitkin, junior, John Porter, Josiah Quincy, John Randolph, John Rea of Pennsylvania, Jacob Richards, Matthias Richards, John Rowan, John Russell, Ebenezer Seaver, Dennis Smelt, John Smilie, Jedediah K. Smith, Samuel Smith, Henry Southard, Richard Stanford, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, John Taylor, John Thompson, Abram Trigg, George M. Troup, Jabez Upham, James I. Van Allen, Philip Van Cortlandt, Archibald Van Horne, Killian K. Van Rensselaer, Isaac Wilbour, Alexander Wilson, and James Witherell.

So it was determined that the main question was open to debate.

Mr. Ely observed, that he regretted that the few observations which he intended to have made

on the main question, should have given rise to so much debate, and detained the House so long. That he did consider the merchants of Philadelphia as exercising a Constitutional right, a right which the House are not warranted to deny them, that he could not see any material difference between that petition and the one from Boston; they were, in his opinion, both couched in decent language, they both related to a subject interesting to the petitioners—a subject about which they had most clearly a right to petition Congress; that the least that could be done with the petitions, was to commit them; that gentlemen had said that the House had not refused their petitions while they suffered them to lie on the table. For his part, he did consider it tantamount to a rejection of a petition when the House, after a motion to commit, and a debate, refused to give them the direction which was usual. That it was consonant with the principles of our General Government, and with all our State Governments, and has been from the first settlement of our country, that every portion of the citizens should have a right to petition the Government on any subject which concerned them. The abridgment of this right, by the rejection of our petitions was one of the causes of complaint of the Colonies against Great Britain, it was a just cause of complaint, and was one of the causes of our separation; and the House could not, he conceived, refuse to give the petition the usual direction.

Mr. BLOUNT moved that the further consideration of this subject be postponed till next Monday week, in order that the House might proceed to take up the more important subject of national defence. He conceived the time of the House ought not to be wasted in such fruitless discussions, when objects of such great national importance required all their attention. Mr. B. would say nothing on the memorial, but addressed a number of observations to the House on the duty of talking less and despatching more business.

Mr. MILNOR opposed the postponement. He could see no substantial difference between the memorials from Boston and Philadelphia. The House had referred the former. Why, then, should they refuse to treat the latter with the like respect, and give it the like direction? Mr. M. was acquainted with the characters of nearly all the signers of the Philadelphia memorial. The wealthy and respectable merchants of the city had, with scarcely an exception, subscribed their names. They had about eight millions of property afloat in the India trade. A large portion of it is implicated in the law which they solicit you to repeal. If the House is determined against the repeal of the law, it is no reason against referring the memorial.

Mr. GARDNER offered a few observations, but he was not distinctly heard. He appeared to be in favor of the reference.

Mr. FISK opposed the reference of the memorial. The petitioners had used the most censurable language. They expressed their alarm at the extent of the demands of our Government upon Britain; they impeached the motives of the Administration; and charged the Government with uncandid and insidious conduct. He perceived a wide difference between the petition from Boston and that from Philadelphia. The former does not arraign the conduct of the Government, but the latter could not have been couched in more disrespectful terms.

With respect to the India trade, it would be remembered that only one or two articles of import from that country were prohibited by the non-importation act. Silk was almost the only one. Mr. F. concluded by citing two cases in which petitions had been rejected; 1st, that of the Yazoo claimants; and 2dly, that of Smith and Ogden. To reject a petition was, therefore, no new thing in the House. He hoped the seal of disgrace affixed to the Philadelphia memorial would not be broken.

Mr. SAWYER was in favor of the postponement, for the reasons suggested by his colleague (Mr. BLOUNT.) He thought there were too many orators in the House for the public good. There was too much talking and too little action.

Mr. DANA.—It requires no ordinary hardihood to stand forth in this House and accuse the petitioners as unworthy to be regarded. If a petition can be entitled to respectful treatment on account of the characters of those who have signed it, this should be so treated. It is from a number of respectable inhabitants of one of the first commercial places in the Union. In public virtue and private worth—in the qualities which entitle to esteem and confidence—there are among them gentlemen of whom it is speaking in moderate language, to say, they are not inferior to members of this House. They would spurn to be the tools of any foreign Power. Will those who accuse them agree to be themselves subjected to such a reproach, if they cannot establish the charge?

The memorial has been censured as if it were indecorous. By what principles are we to estimate the powers of language and the character of a composition, if the expressions used by the petitioners are to be deemed a violation of decorum? The language is not rude; it is manly; it is honorable to the petitioners. I would hope the time is not yet come when the attention of Congress is to be gained only by addressing them in the style of the sycophant.

The memorial states certain reasons against permitting the non-importation act to go into operation, and contains a request for its repeal, is this an offence against the respect due to Congress? If no petition is to be regarded unless it coincides with the opinion of a majority of the Legislature, of what use is the right of petitioning? How are errors in legislation to be corrected, or grievances to be redressed, if they may not be mentioned by those whose interests are affected?

Supreme—perfect—immortal!—are attributes, which courtly adulation has assigned to monarchial prerogative. It has been pretended, the King can do no wrong—the King can intend no wrong—the King can think no wrong. Is such a doctrine to be adopted in our elective Government? Shall it be pronounced an offence against the dignity of

this House, to speak as if it were possible for us to err? Will it be said, that the petitioners are not qualified to judge on the subject of their petition, that commercial men are not qualified to judge of a commercial question? Does any member of this House consider himself as having more commercial information than the Chamber of Commerce, or the collective body of merchants in Philadelphia? When such a body of men submits to our consideration the result of their experience and reflections, on a question intimately connected with their own profession and constant employment, who will say that they all have less knowledge on the subject than any individual member of this House, than any one of the Heads of Department, or than the President himself? As the language of the memorial is decorous, as it does not charge the Government with any corrupt motive, I hope the House will agree to the proposed reference.

Mr. Kelly said, he had not intended to take any part in the debate, but as he had the honor to be acquainted with most of the signers of the memorial, he felt himself bound to rise and rescue them from the reproach which had been attempted to be cast upon them. Many of their names are to be venerated. Their services had been rendered to their native State in their own Legislature, and to the nation on the floor of Congress. The memorial is drawn in a plain and manly style, and reflected honor on those who had signed it. Many of the petitioners would suffer in no respect by a comparison with the members of this House. In all the attributes which constitute worth or greatness, which gain our affections, or command our esteem, they are inferior to none. They are arraigned because they have presumed to question the expediency of the non-importation act. Are any men more competent than merchants, to judge of a commercial law? The object of the memorial from Boston and that from Philadelphia was the same, and if the former was expressed in a courteous and the latter in a manly style, it was no reason for a different treatment.

The question on postponement till Monday was taken and lost—yeas 44, nays 60, as follows:

Yeas—Evan Alexander, David Bard, Burwell Bassett, John Blake, jun., Thomas Blount, John Boyle, Robert Brown, Joseph Calhoun, Peter Carlton, Matthew Clay, John Clopton, Jacob Crowninshield, Richard Cutts, John Dawson, Josiah Deane, Daniel M. Durell, Barent Gardenier, Isaiah L. Green, William Helms, Benjamin Howard, Reuben Humphreys, Daniel Ilsley, Walter Jones, Philip B. Key, John Lambert, John Love, Josiah Masters, William McCreery, John Montgomery, Nicholas R. Moore, Jeremiah Morrow, Gurdon S. Mumford, Thomas Newton, Wilson C. Nicholas, Lemuel Sawyer, Ebenezer Seaver, John Smilie, Jedediah K. Smith, Samuel Smith, John Smith, George M. Troup, Robert Whitehill, Alexander Wilson, and James Witherell.

Nays—Willis Alston, jun., Ezekiel Bacon, Joseph Barker, William W. Bibb, William Blackledge, William Butler, Epaphroditus Champion, John Chandler, Martin Chittenden, Howell Cobb, John Culpepper, Samuel W. Dana, John Davenport, jun., Joseph Desha, James Elliot, William Ely, William Findley, James Fisk, Meshack Franklin, Francis Gardner, James M. Garnett, Charles Goldsborough, Peterson Goodwyn, Edwin Gray, John Harris, John Heister, William Hoge, James Holland, David Holmes, Robert Jenkins, Richard M. Johnson, James Kelly, William Kirkpatrick, Robert Marion, William Milnor, Thomas Moore, John Morrow, Jonathan O. Mosely, Thomas Newbold, Timothy Pitkin, jun., John Porter, Josiah Quincy, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Matthias Richards, John Rowan, John Russell, James Sloan, Henry Southard, Richard Stanford, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, John Taylor, Jabez Upham, James I. Van Allen, Philip Van Cortlandt, and Killian K. Van Rennselaer.

And then the main question being taken, that the said memorial be referred to the Committee of the whole House to whom is committed the bill supplementary to the act, entitled "An act to prohibit the importation of certain goods, wares, and merchandise," as originally proposed; it passed in the negative,—yeas 46, nays 55, as follows:

Yeas—Burwell Bassett, William W. Bibb, Epaphroditus Champion, Martin Chittenden, John Clopton, Howell Cobb, John Culpepper, Samuel W. Dana, John Davenport, jun., James Elliot, William Ely, William Findley, Francis Gardner, James M. Garnett, Charles Goldsborough, Edwin Gray, John Harris, John Heister, William Hoge, Robert Jenkins, James Kelly, William Kirkpatrick, Robert Marion, William Milnor, Thomas Moore, Jeremiah Morrow, John Morrow, Jonathan O. Mosely, Thomas Newbold, Timothy Pitkin, jun., John Porter, Josiah Quincy, John Randolph, John Rea of Pennsylvania, Jacob Richards, Matthias Richards, John Russell, Richard Stanford, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, John Taylor, Jabez Upham, James I. Van Allen, Philip Van Cortlandt, and Killian K. Van Rensselaer.

Nays—Evan Alexander, Willis Alston, jr., Ezekiel Bacon, David Bard, Joseph Barker, William Blackledge, John Blake, jun., Thomas Blount, John Boyle, Robert Brown, William Butler, Joseph Calhoun, Peter Carlton, John Chandler, Matthew Clay, Jacob Crowninshield, Richard Cutts, Josiah Deane, Joseph Desha, Daniel M. Durell, James Fisk, Meshack Franklin, Barent Gardenier, Peterson Goodwyn, Isaiah L. Green, William Helms, James Holland, David Holmes, Benjamin Howard, Reuben Humphreys, Daniel Ilsley, Richard M. Johnson, Walter Jones, John Lambert, John Love, Josiah Masters, William McCreery, John Montgomery, Nicholas R. Moore, Gurdon S. Mumford, Thomas Newton, Wilson C. Nicholas, John Rhea of Tennessee, John Rowan, Lemuel Sawyer, Ebenezer Seaver, James Sloan, John Smilie, Jedediah K. Smith, Samuel Smith, John Smith, Henry Southard, Robert Whitehill, Alexander Wilson, and James Witherell.

It being now near five o'clock, Mr. Blount moved that the House go into Committee of the Whole, on the subject of fortifications. The House, he said, would be sensible that it was his wish at this late hour to go into Committee of the Whole, only in order to give the business priority to any other to-morrow.

On taking the question, there were but 68 members present; not being a quorum, the House of course adjourned.

WEDNESDAY, December 16.

DEFENCE OF PORTS AND HARBORS.

The House again resolved itself into a Committee of the Whole on the bill supplementary to an act, entitled "An act for fortifying the ports and harbors, and for building gunboats."

The first section of the bill being yet under consideration, and the sums of $1,500,000, and $1,000,000, having been moved on a former day to be appropriated for this object, a considerable debate took place on the proper sum to be inserted in the blank for that purpose, in the course of which Mr. GARDENIER moved to fill the blank with $2,500,000. In this debate Messrs. BLOUNT, CHANDLER, SMILIE, HOLLAND, NELSON, KELLY, and WITHERELL, generally advocated the sum reported by the Committee of Aggressions, (one million;) and Messrs. MUMFORD, COOK, STURGES, MOSELY, ROWAN, and TAYLOR, expressed themselves in favor of a large sum.

Mr. GARDENIER said, that for himself, he could have been well contented if the gentleman from North Carolina, (Mr. BLOUNT,) who seemed so anxious to hurry the passage of the bill, had checked somewhat his ardor for expedition, and had discovered a little more for liberality. He hoped, however, the Committee would bear in mind, that, as well by the original resolution as by the language of this bill, they were were pledged effectually to fortify the ports and harbors of the United States. Comparatively, it was of little moment whether the bill was passed to-day or a week hence; but it was all-important that a sum should be voted sufficient to fortify effectually. He had remarked, before, that a nation could best preserve peace by being prepared for war. This maxim was not only incontrovertible as a general position, but it should be peculiarly impressive at the present moment. It was their duty to put the nation in as perfect a state of preparation for meeting the approaching storm as their resources would possibly permit. In proportion as a nation was prepared for war, would the inducements to commence hostilities be lessened. And you not only lessen the inducement, but you place the nation in a condition to meet the evils of war, if ultimately it cannot be avoided. The war with which the United States are at present threatened, is in every view to be deprecated, because in every view it promises nothing but calamity. It must be waged with a Power which of all others he should, under existing circumstances, encounter with the greatest reluctance. However she had trampled on our rights; however necessary for preserving the national honor it might be to stretch forth the national arm against her; however determined in such a contest to hazard everything, still, the necessity of a war with Britain ought to be deeply regretted. It would be a war in which even success would be calamitous—in which we should have cause to mourn, even in the hour of victory. When we have humbled Britain, she will be no longer able to resist France. Already, every Power in Europe has been crushed by the almost universal conqueror. Great Britain alone, encircled by the arms of Neptune, is unsubdued, and perhaps her strength alone has preserved us, and with us the universe, from bondage. It would be matter, therefore, of the deepest regret if she should force us into a war. But aggression, said he, must be repelled, even when committed by a nation whose interests are so closely interwoven with our own—even if her existence should seem to be the strongest bulwark of our own independence. It is our duty—we must protect the honor, because that is essential to the prosperity, to the very existence of the nation. Whoever first assails us, is first our enemy. Her let us first resist—effectually, if we can—and trust in Providence and the valor of our nation for success in our efforts to repel every future foe.

We can derive no benefit even from a successful war. We may take Canada indeed, and perhaps Nova Scotia, but we are better without them. We may send out privateers, and harass, and to some extent intercept the British commerce, but the measure by which we can injure her most deeply—most vitally—is the suspension of all intercourse with her. But this is a two-edged sword. Though it would wound her deeply, we too must suffer much from it. Though it may be ruin to her, it will require all our efforts to maintain our ground, even in this combat. When it was recollected that our widely-extended commerce was at the mercy of the British cruisers, who could close his mind against the conviction that the effects of the first shock of war would be to us calamitous in the extreme? And this commerce could not be protected. We have no adequate force on the water—our infant Navy has dwindled into impotence. Commerce has been left, unfortunately, to protect itself, and hence a vast portion of the national wealth will be worse than lost—it will give the enemy new means of assailing us. He could not but think it unfortunate, to apply no harder epithet, that a force had not at the proper time been provided for the protection of so much property. But there is, said he, no alternative. If war must be resorted to, commerce must be sacrificed. And it would be well if this were all. But our cities are unfortified, unprotected, as completely at the mercy of an enemy as our commerce itself. It will not be a mere wanton spirit of devastation which will spoil and desolate your cities; but the wealth which they contain, will, in the event of a war with Great Britain, be a temptation which a more honest nation in her circumstances could not resist. Her situation will disable her from resisting it, even if she wished to do it. Of necessity, a war on her part must be a predatory one. Her commerce has been rooted out from the continent of Europe—it will be destroyed here. Her manufacturers, unable to find employment—of course bread, on shore, by honest labor—must starve in the streets, or seek for sustenance on the ocean. Yes, sir, they must plunder or starve. Great Britain will never again attempt to conquer your country. But she must, in the event of a war, make it a buccaneering war.

What, then, are we to do? To us it will not be a war in which we can promise ourselves laurels

or trophies. It must be, on our side, an effort to show England how long we can do without her manufactures. If we take her provinces, we take a burden from her shoulders, which perhaps only her pride has induced her to bear hitherto—we snatch from her, with a naked hand, a burning iron. The war, therefore, on our part, must be defensive. The enemy is at no point exposed to attack. To suspend intercourse, and thus to destroy her commerce and manufactures, is to make war the most injurious, the most fatal, of any we can devise.

Apprehending such a war, said Mr. G., the whole object of your deliberations should be to save all you can at the first outset. Your commerce, quietly resigned to the enemy, your cities alone can be saved; and if they are to be saved, they must be fortified completely and effectually. It became, of course, necessary to inquire what sum was adequate to the object. He here remarked, that if we were to have war at all, it would not probably be delayed beyond a twelvemonth. If the cities were not protected in that time, it would perhaps be hardly necessary to undertake it at all. Equally unnecessary would it be to do it at all, unless it were done effectually. The sum moved by the chairman of the Committee of Aggressions, he deemed totally inadequate to the purpose of effectual protection. It might be enough in time of profound peace, as the basis of future grants. It might have been enough five or six years since, if the same sum had been added every year after. But it was not sufficient now: it was absurd to talk of its being sufficient for the approaching contest. Gentlemen, indeed, had very gravely asked for calculations to prove the sum sufficient. Without pretending to be deeply skilled in the subject of fortifications, or the expense of erecting them, he knew that the plan laid before the House by the Secretary of War, so far as respected New York, was, he would not say intended, but certainly calculated to mislead. If the Secretary of War had been as unfortunate in his plans and calculations in regard to other cities, Mr. G. would be compelled to pay very little respect to his opinions. [Mr. G. here read the following part of the Secretary's report, "In addition to Fort Columbus, (on Governor's island,) which is in great forwardness, and will be a strong, regular work, of the best materials, it has been considered necessary to erect a strong circular battery for two tiers of cannon, one above the other, at the extreme westerly point of Governor's island; a battery of a circular kind on Ellis' island, enclosed in rear; a strong circular adjoining the front of the bastion of the old battery, in front of the city; and a circular battery for one tier of cannon on a large block wharf, to be established on the North river, at the northerly part of the city; and a strong redoubt on 'Bedloe's island," &c.]

These, then, were the works which were effectually to fortify the port of New York—effectually to protect the city! It is absurd, said he. All the money you could ever expend on the points proposed would be insufficient to defend the city. To defend the city, you must keep the enemy out of the bay. The strongest possible fortifications on Governor's island could never defend the city. It would be necessary, indeed, that fortifications should be placed there, and also at other points, that if an enemy should force a passage into the bay, he might be obliged to fight inch by inch, and might thus perhaps be disabled at the last. Your great work, said he, must be at the Narrows. If you can cripple the enemy there, he may, even should he be able to pass, be in no condition to sustain the annoyance he might meet within the bay. If you are sincere in professing an intention to defend New York, begin here, and give money enough for the purpose.

It had, indeed, at one time, he said, been proposed to fortify by obstruction, by building a sort of dam across the channel, and placing batteries on it. However that notion had been at first countenanced, it was now scouted, and he knew no judicious man who was at this time of day an advocate for it. It had its origin in the apprehensions of the people of New York, who expected immediate war in consequence of the attack on the Chesapeake. They were glad to seize on any plan of defence which held out the least hope of security. And they had but too much sad experience to teach them that the plan must require but very little money, to stand any chance of being adopted by the Government. And indeed we were overwhelmed with plans—and cheap plans too—almost all on the same principle, each vieing with the other in making his plan the cheapest, because that would (if anything could) insure it the patronage of the Administration. But, when the first alarm had subsided, the notion was abandoned, even by the City Corporation, who had not been able to resist the general error, but who were ultimately wise enough to give it up. The effect, said Mr. G., which these obstructions would have, cannot be exactly foreseen; but it is not improbable that the river at the city of Albany might not be longer navigable, and thus that city, with the flourishing villages of Troy and Lansingburg, totally ruined; and that New York, in the time of a freshet, might be, to a considerable extent, inundated. If these destructive consequences followed, there would be no remedy. The hazard was of course, therefore, too great to be ever encountered. It would be better for the people of New York to be plundered once in twenty years, than to be inundated every Spring, to say nothing of the injustice of ruining the up-river towns, for the sake of New York below.

In the general estimate of the Secretary, only $840,000 were asked for the effectual defence of all the seaports from New Orleans to the District of Maine. A million, however, was now proposed. Did it (he asked) require either argument or calculations to convince them that this sum was insufficient? Did gentlemen require figures to satisfy them, that if it was distributed with anything like "equal and exact justice," it could not be sufficient. It amounted to no more than about $25,000 to each port; and would any gentleman take upon himself to say, that any one port could be effectually fortified with that sum? Or did they

mean that the cities should be only half fortified—and of course not fortified at all. If they did, they would act consistently in voting for no more than one million.

If, said Mr. G., instead of a federative republican form of Government (and he prayed to God it might long continue to be our blessing and our boast) we had a monarch who would feel an equal regard for every portion of his dominions, would he leave unprotected the most exposed and the most valuable points? Would Congress be less watchful of the security of every part of the empire? He hoped for the honor of our Government they would not.

When the Federal Government, he said, was originally proposed for adoption, in New York, the most powerful argument urged against that State entering into the Union, was, that it thereby yielded to the General Government the impost duties. But they did yield them, in the hope that the General Government would act in a manner worthy of the confidence which New York had reposed in it. That State now paid nearly four millions a year? With this annual income she might years ago have fortified herself against not only the other States, but the world. But instead of dictating (which she might have done) she is your humble suppliant. And as such you have treated her. You have left her defenceless.

But I will, said he, call upon your gratitude, upon your justice, no longer. Certainly you will not be deaf to your own interests. When your foreign trade is destroyed, your coasting trade will be of great importance. It is in this view, that the possession by us of the port of New York cannot be deemed of too much moment. It is the turnpike gate between the Eastern States and the people who are supplied from the banks of the Hudson. He hoped that, at least, Eastern gentlemen would not be insensible to this argument; their constituents were deeply interested in the safety of New York. And though the enemy may not be able to keep possession for any great length of time of the city, yet, once in possession of the harbor, no force in our power could oblige her to quit it.

There was, he said, much use made of reviling language towards Great Britain—even in that House. He would rather see less of this, and more of a disposition to prepare sincerely for defence—less disposition to talk, and more to act.

At a time when the nation should be exerting its utmost energies in preparing for hostilities, to a stranger it would appear wonderful, that the party most attached to the Administration should be the least disposed to grant money for the national defence. In Great Britain it was usual for the opposition to oppose large appropriations, for the purpose of embarrassing the Government. But he and those with whom he acted wished the Government to be strengthened as much as possible. He had not only voted to give them everything they asked for—but more. If, after all this, the best use should not be made of the means which were offered to the Administration; if, by their imbecility, incapacity, or irresoluteness, the nation should suffer; to the nation, must the Administration answer it.

If gentlemen were convinced that the sum proposed was sufficient for the great work it was destined to accomplish, there could be no use in dwelling longer upon the subject. He was himself willing to acknowledge that the sum was liberal enough to commence this work, but it was insufficient, totally insufficient, for the effectual defence of so extensive a seacoast. He would, therefore, move a larger sum than had yet been proposed, though not so large as he had moved on a former occasion. He found the temper of the House to be so averse to granting a sufficient sum, that he could not have the confidence again to propose that sum. He should move for two million five hundred thousand dollars.

It had been said, that more than a million could not be expended in one year. He considered this a most extraordinary remark—a most unfounded, a most absurd one. When the cities are to be fortified from New Orleans to Maine, with a population of six millions, could no more than one million of dollars be expended? Workmen and materials enough could be obtained in half the time, to expend ten times the sum. It was an insult to the information and good sense of the House to advance such a proposition in it. He hoped that the language of the bill "to afford effectual protection," would be come up to, by the appropriation which should now be made. At least he hoped the House would be true to the engagement it had made. That it would not, like the weird sisters, "keep the word of promise to the ear and break it to the sense."

They could not calculate on a state of war, without calculating also on draining the Treasury, as some gentlemen had in their alarm expressed it. However unpleasant it may be to have the strong box emptied—however it might change the appearance of the reports of the Secretary; however it might mortify the Administration to be obliged to check their exultation when they were deprived of the pleasure of telling the nation what vast piles of dollars had been hoarded up, he hoped, nevertheless, always to see it emptied when the national defence required it. For that purpose it had been amassed, and it was worth nothing unless it was expended for that purpose when the exigency of the times demanded it. And there was great consolation, he said, on reflecting that although, for the purpose of fortifying our cities, it might be taken from the Treasury, it still remained in the nation—it was not lost—it was still in the family, though not immediately in the posssession of the head of the family. To the health of the natural body, it was not necessary, indeed it would be destructive, to have all the blood in the heart—neither could it be any benefit to the political body to have all its wealth in the Treasury.

With these remarks, he would submit to the decision of the House. He hoped they would protect effectually. When that was done, almost all that would be necessary on our part in the event of war, was accomplished; for on the sea-

board only were we exposed. If the nation can with honor avoid war, these expenditures will have been a very small sum paid as the price of peace. If war must ensue, no money will have been laid out to better purpose than this.

Mr. Quincy.—Mr. Chairman, in filling this blank, you put the heart into this bill. If, in doing it, you inquire, not what are the exigencies of the commercial cities, but what is the least sum possible, which will stay popular clamor, you may as well not pass the act. It will be useless: it will be lifeless; it will be worse than useless and lifeless; it will mislead and deceive the people. Thinking themselves under your guardianship, they will neglect to resort to their own resources. The amount of this appropriation is the vital principle; it is the spirit of the bill. All the rest is wind, and water, and earth. Reduce this to less than is sufficient for effectual defence, or make it wholly inadequate, and you may call the bill on the table an active being if you please, but it is no more like an efficient agent than a corpse is like a living man. It has, indeed, the form and appearance of power; but it enlivens no hope. It will be followed only by distress and despair. Here, then, the advocates of the commercial cities must make a stand. Here they must be victorious, or their cause is lost.

It is impossible rightly to appreciate our duties to this nation on the subject now before the Committee, without making some reference to the general situation and prospects of this country. Whether any defence for our seacoast be necessary, depends upon our perception of present, or our anticipation of future danger. The nature and degree of that defence, whether the scale of appropriation shall be liberal or limited, depends upon our view of the nature of the evils which surround us, and has a strict and necessary connexion with their number, their species, and extent. And although the gentleman from Connecticut (Mr. Sturges) has been interruped and called to order, for taking an enlarged survey of our national relations upon this question, I shall not be deterred from pursuing a similar course. I shall not ask the leave of the gentleman from Virginia, (Mr. Nicholas,) nor shall I apologize to this Committee, for tracing national obligations to their natural though distant sources. The features of our times, the characters of the nations which interfere with our interests, our relative strength and weakness, have all an inevitable influence in deciding the nature of the preparation to be made, and, of consequence, the amount of the sum to be appropriated.

I shall also adopt this course, the rather, because the principles from which gentlemen have generally drawn the duty, and the extent of seacoast and frontier defence, have seemed altogether too contracted for the magnitude of the object. I am not satisfied that the great interests of the nation should be placed on so narrow a basis. I cannot consent to deduce permanent duties from temporary pressure. Let us not appear to be stung by insult into the fulfilment of the highest and the most perpetual obligations.

The views I shall present for the consideration of the Committee will be neither local nor sectional. Nor shall they have a party texture. It shall not be my fault if, in the present crisis of our country, the spirit of party be not crushed upon this floor. We all stand upon the brink of a precipice. It is no time to jostle one another. The fates of our country are suspended over a gulf so dark, that no human eye can penetrate to its bottom; nor has any spirit come up from its depths to tell us if there be anything there which will break our fall.

It is very obvious, from the whole course of debate, that our duties are deduced from the hazards immediately impending. British aggressions make men alive to the dangers which surround our commercial cities. British insults inspire whatever will this House evinces to open the Treasury to their necessities. The power and inclination of that nation to injure us, are the themes of every argument. Thence spring our propositions for defence, and they all have a single reference to the evils seeming to spread from that quarter. I blame not this temper. It is the nature of our species. It is the daily practice of man in his individual character; thoughtless of the past, careless of the future, deeply impressed only by what is present, never wise from the experience of others, always half taught by his own, starting with a wild and over-hasty speed at the first touch of the spur of necessity, dull and callous to the urgency of general obligations. But will national wisdom be caught in this common snare? Will men acting in high stations, rich in the confidence of their countrymen—will statesmen stumble on, blind and deaf to the aspects and warnings of nature, and take no step which is not forced by some incumbent pressure? Such weakness and folly far exceed any failings individuals can exhibit. These are often saved from the effects of their conduct by friends, by the influence or laws of society; even death itself sometimes intervenes and rescues them from the experience of all the consequences of their errors. But it is not so with nations. Compared with the life of an individual, their existence is an immortality. They have neither associates to watch over them, nor any superintending sovereignty to preserve them from the results of their measures. They never fail to gather, in full harvest, the fruit of the wisdom or folly of their rulers.

While, therefore, I honor the patriotism which keenly feels the insults offered our country, I cannot follow the common example, and suffer passion to evaporate in vain expressions of indignation. The use I would make of recent injuries, is not limited to mere utterance of anger. "From this toad, ugly and venomous, I would extract a precious jewel." There is a general truth, which, although it be the lesson of all history, men seem not to realize; truth, which the events of our time are adapted deeply to impress. Without reference to names, or nations, uncontrolled power will always be insolent; when the strong and the weak meet together on the same plain, without other restraints than natural law, the one must suffer

and the other will oppress. If weakness be the allotment of Providence, or the condition of our nature, we have only to take resignation to our bosom, and to bend to the Supreme will. But if our imbecility be artificial; if it result from our want of sense, or want of spirit, however inclined we may be to cast the odium of unprovoked injury upon the oppressor, we are in truth half-workers in our own destruction; we are the panders to our own shame. Have we not sense? Have we not intelligence? Have we not numbers? Have we not riches? Have we not a people to whom their Constitution and liberties are dear? Why, then, should we be content with anything less than a full protection to our rights and most important interests? Why should not the wealthy, the populous, and the exposed parts of our nation, be covered by the national shield, not according to the niggardly scale of existing surpluses in your Treasury, but upon the liberal principle of giving certain security and rational content? The morality of nations ever was and ever will be like the morality of John Falstaff: "If the young dace be the known bait of the old pike, there is no law in nature to prevent his snapping at him." We have the wisdom of former times; we have the experience of our own, in concurrence, testifying to the great truth of which I am speaking. If we listen not in time to their precepts, we are sealed for destruction. But we are wild; under the influence of a vain illusion; we are seized with an idiot fancy. This is a new world, we are told, and new principles are to prevail in it. We are to be safe, without exertion; secure, without foresight; powerful, without concentration; justice to others will necessarily induce justice to ourselves. I look with terror at that vengeance which shall awaken us from these false and delusive dreams.

Was it ever read in history, was it ever told in story, that a maritime nation could be safe without a marine defence? Commercial deposites without efficient protection? Gold left to sparkle on every sea-cliff, the lure and the reward of every spoiler? Who are we, that more than others, we can hope to be rich and not tempt the robber?—defenceless, and not fall his prey? Who are we that we can cast our wealth upon the wave, and scatter it on the sand, without guardian and without shelter, and expect to return every succeeding day and find it undiminished, as though it were consecrate? Is there any characteristic in our own times which makes less than efficient protection more wise than in former? Let gentlemen retrace the scenes which have been exhibited among our neighbor nations for these sixteen or seventeen years past. I ask, What principle is sacred? What have the weak possessed which the strong wanted, that the one has not seized and the other has not lost? On the continent of Europe, all the weak Powers have been annihilated. Holland, Switzerland, the Italian States, Denmark, and, at this moment, Portugal—how and where are they? Absorbed or desolated by some gigantic nation. Has our distance or our innocence preserved us from the effects of that piratical humor which never fails to follow power and opportunity? From the withholding the right of deposite on the Mississippi, in 1794, to the affair of the Chesapeake, in every year, and on every sea, we have been the objects of insult and plunder. Here is no question concerning nations. France, Spain, and Great Britain, each in proportion to its means and its interests, have made us feel its strength and our comparative weakness. Let it never be out of our memories, that wealth unprotected is the inevitable prey of power uncontrolled.

When we consider our relative situation to the Powers at war, the injuries we have received ought indeed to teach us wisdom, but can excite no surprise, and demand from us certainly a qualified indignation. For sixteen or seventeen years, we, alone, of all the nations of the earth, have enjoyed an uninterrupted season of peace. We have grown rich by the follies and misfortunes of other nations. Aiding, in turn, every belligerent, and carrying on all the commerce of some and a portion of the commerce of all of them, is it strange that we should excite, successively, the jealousy and the envy of each; particularly of that one with whose power and policy the exercise of our rights most interfered? Like innocent, defenceless sheep, without prudence, and almost without a shepherd, we have been cropping the rich harvest of neutrality on the very field where the wild beasts were at combat. We have pressed our unprotected fatness between the lion and the tiger in the midst of their rage. Is it wonderful that on the one side and on the other our rights should be laid prostrate? Rather, is it not more wonderful that we have witnessed so few victims?

The truth is, that we owe our present safety and most enviable condition, not to our distance from the scene of war, much less to our wisdom, but to the full employment the European Powers have found for one another. But let us not be wilfully deaf to the warnings of events. The day of mutual occupation among those Powers draws fast to a close. Everything tends to a continental amalgamation. There is but one check to universal dominion. The sea-power as yet controls the land-power. Let these unite by either treaty or conquest, and if we long enjoy independence, it will alone be because we are prepared to fight for it. We are too rich not to excite avarice; our weight in the scale of nations grows too important not to invite ambition. If we are safe from the attempts of either, it will only be by showing the world that we have armor invulnerable and spirits invincible. But it is asked, "What have we to do with Europe?" "Three thousand miles of ocean intervenes. How are we interested in the events of her struggles?" Heaven forbid that this nation should ever entertain so childish an error, so fatal a delusion!

The ocean is not now what it once was to the savage, an insurmountable obstacle, an impassable barrier. To be sea-girt, is not at the present day, as it was in the times of fable, to be encircled by a magical girdle, which rendered its possessor sometimes invisible, and always invulnerable.

Art, science, enterprise, industry, have made an entire revolution in the state of things on that element. Instead of being the terror, it is the joy, the home of thousands. It is the common theatre of nations. There men meet; there they traffic; there struggle. It is a smooth and beaten path. It is a military road, reaching from each nation to every other; on which you can oppose no obstacle, except floating bulwarks or batteries, where it terminates at your great deposites of wealth and population. Instead of being separated by the ocean, it approximates us. It is an instrument of facility. Away, then, with such vain imaginations. The fates of neighbor nations are ours, if we are not wise in time. The character of the age is military. Would you be safe? Put on your armor. Unprotected, you invite aggression. What is sacred which power can violate?

But it is said, "We are strong. Two or three millions of people are invincible." Very true. A foreign foe can never march to the interior of such a nation. Liberty is safe.' There is no danger of subjugation. But does this satisfy the obligations of the social compact? Do we unite in society merely to attain a certainty for its existence? Does not a rational security for life, liberty, and property, compose one of its essential duties? And how are these fulfilled when they are all at the mercy of every sea-robber? Our cities, at this moment, hold their tenure at the will of the naval Powers. It is not from your protection, but from their forbearance, that our cities have a name and a being. It is true they are suffered to exist for the present; because opportunity and interest have not yet concurred to invite a destruction of them. But concur they will, and in all human probability, at no very distant period; and then if our cities are not in ruins, it will be because they have bought off invasion.

The cities were settled under the faith of the social compact. Its obligation to protect, results from its very nature. This is the first law; the very end on account of which it was formed. Its duty has reference to the numbers, the wealth, and exposure, of the ports, which claim its care, and has nothing at all to do with the surpluses in your Treasury. Yet we hear men every day exclaiming, "It is impossible. We cannot give 'effectual protection. It would exhaust the Treas-'ury. It is better for the inhabitants to retire 'when the enemy approaches than to incur the 'necessary expense of batteries and marine bul-'warks." I ask this question: Are the men who reason in this way those who realize the danger? Are they those who have a deep stake in the cities? It is not, perhaps, in the power of human nature to attain a very lively sense of evils to which we are not ourselves exposed.

Among those ancient Republics which existed many centuries before the Christian era, the very names of which have been lost, in the lapse of time, we are told of one which adopted the two following principles, as a part of its fundamental Constitution: First, "In all questions of war, the inhabitants of the frontier shall have no voice." Lest in the vivid apprehension of their particular exposure, they should be less alive than was fit to the honor of the Republic. Second, "In all questions concerning the defence of the frontier and cities, the inhabitants of the mountains shall have no voice." Both principles were drawn from a deep knowledge of human nature, and a profound observation of the secret workings of the human heart. How can those who live ten days' march from the seacoast realize its hazards? Their sympathies can alone be general. They pretend to no more. Hence we see daily resort had to every species of apology which can be imagined to excuse the appropriation of the least sum possible consistent with not giving ground to the belief of an intention wholly to abandon. Hence we hear the jealousies which naturally spring up between commerce and agriculture excited and propagated. I will not stop to answer such strange insinuations. I will not undertake to prove, that if you throw a dam across the mouth of a river, that the upper country will be overflowed. Ask the inhabitants of the hills whose waters feed the Ohio, if the blockade of the Mississippi would not affect their prosperity? At this very moment Vermont feels the pressure occasioned by the contraction of our commerce. I have concluded what I would urge upon this point. Our obligation to protect is imperious. The necessities of the cities are pressing. Our ability is unquestionable. The general state of society urges this duty with no ordinary warnings. It remains, then, only to consider what is the nature of that protection which we are bound to extend; what is the principle by which it is to be limited? The answer is obvious. It must be adequate to its end. It must have reference to the nature and exigency of the exposure to which the society is subject. The shield must cover the man. A rational strength should exist in all its parts. But about the principal seats of life, where the great arteries spring, its thick bosses should be, if possible, impenetrable. In distributing protection, equality depends upon proportion; and this has reference to the wealth, numbers, situation, and exposure, of the different ports for which protection is required. Savannah, and Charleston, and Norfolk, and Portland, and every other place of even less importance, are the objects of the care and affection of the national councils, as much as New York or Newport. Yet these last claim a greater proportion of the national revenues than either of the former, and possibly than all of them together. In this there is no inequality, as gentlemen seem to insinuate; because in most or all the particulars which are the measure of proportion, these places far exceed either, perhaps all, the former, and probably much beyond the amount of the share they will attain of any appropriation. But it is asked, "What is that sum which is adequate to protection?" And there is great exultation because the advocates of an augmented appropriation cannot stipulate that the sum they propose is sufficient. If adequate protection be admitted to be our duty, it is not necessary for us to show that the sum we propose is adequate. It is enough if we prove the sum the

War Department proposes is inadequate. If it be plain that this is wholly insufficient, then by augmenting the sum the nearer we approach to that adequacy of protection in which, it is admitted, consists our duty. And if, in the amount which we advocate, we do not exceed what is certainly sufficient, the greater the amount the more do we fulfil our obligations. Now, although it is not in our power to show what would be a sufficient protection for every port and harbor of the United States, it is easy to bring the scheme of defence proposed by the Secretary of War to the standard of general principles, and to show, to the meanest capacity, its insufficiency.

The grand scheme, which includes all the patronage of the Administration, consists in two hundred and fifty-seven gunboats and one million of dollars' worth of fortifications. I lay a Navy out of the question. So far from any additions to that species of defence, it is well understood that all those ships we have already are not intended to be put into commission. Now can it want any argument to convince a reflecting mind that these gunboats and such fortifications are wholly inadequate to the proposed object—national security for all our ports and harbors? In the ordinary state of the world, when the Powers of Europe balanced and weakened one another, and their fears at home checked their enterprises abroad, such a system of defence would have scarcely deserved the name. Much less at a period of society like the present, when political revolutions fast tend to put all power into one hand. This once effected, and no man can doubt but that if Americans are safe, it is only because we have strong ramparts and stout hearts.

There is one objection to this system, in truth very strong; yet which its advocates in argument consider as very slight. It is, that so great a proportion of it consists in gunboats; a species of warlike instrument, the least valued in the places where defence is most wanted. It is undeniable that they are exceedingly unpopular in cities. The inhabitants do not willingly trust their lives and fortunes in such bottoms. Of all military principles, perhaps, this is the most sound, that the instruments to be put into the hands of those who are to fight, should always be of that nature and structure, to which not only they are accustomed, but in which also they have confidence. Now it is a fact undisputed, that our seamen and city militia have an instinctive contempt for gunboats. All agree that these are the less power, and yet they are, in appropriation, out of all proportion to the greater power, fortifications. Within these two years we have appropriated more than a million of dollars for gunboats, and now only a like sum is proposed for all the contemplated land fortifications, to which these gunboats are admitted only to be as an aid. The gentleman from Vermont (Mr. FISK) told us the other day, that we had heretofore expended "many millions in fortifications." The assertion shows how little gentlemen trouble themselves with detail. By the report of the Secretary at War, in 1805, from the establishment of the Federal Constitution to that date, there had been expended in fortifying all the ports and harbors of the United States only nine hundred and forty-three thousand dollars. Since that period we have appropriated three hundred thousand dollars; of which less than two hundred thousand have been expended. So that these "many millions," dwindle, on examination, to a trifle more than one million one hundred thousand dollars. The manner in which these appropriations were expended, and the time which has intervened between the application of the different sums, have made former expenditures but of little weight in estimating what is necessary in the present exigency.

But I cannot have confidence in the system of defence proposed, for another reason. The exposition made by the Secretary of War is not calculated to excite implicit faith in his intelligence on the subject. We have two reports, on the system of defence, made at this session, from that Department; and there is a palpable disagreement between them, as to the amount necessary for fortifications. The one stating that amount to be seven hundred and fifty thousand, and the other nine hundred thousand dollars—a difference of one hundred and fifty thousand!

[Here Mr. Q. was interrupted by Mr. BLOUNT, who said this difference arose from one of the estimates including, and the other not including the balance of unexpended appropriations.]

This may account for a considerable part of the difference but not for the whole. Still there remains a diversity of twenty or thirty thousand dollars between these two estimates, for which even this explanation does not account, and no other reason is offered for its existence. But there is another circumstance, which takes away altogether any grounds of confidence in the calculations of the Secretary in these reports, and which is common to both. And this is, the entire want of any specification of particulars, from which the gross amount of the appropriation recommended results. We have, it is true, a long account of batteries, and towers, and magazines, and barracks, and mud walls, and gunboats, but when we arrive at the specification of the amount of the cost of the fortification of each particular place, it stands in all the intellectual majesty and satisfactory precision of—*blanks*. How can this Committee put any confidence in such an estimate as this; which, although it comes to us in the dignity of an official folio, is nothing more than what we Yankees call—*a guess?* In what consists the evidence of arithmetical skill? In the utterance of a round sum, or in the ascertainment and the just addition of the constituent units? What is the criterion of mathematical ability? Is it in the mere describing a whole figure, or in the exhibition of accuracy and proportion in the parts? It is the duty of a statesman to have at his command the details of office. And, although when called upon for general estimates relative to complex operations, he has a right to require great indulgence for unforeseen circumstances, which may cause, in his ultimate expenditure, excess beyond his calculation; yet he has

no right that men, who act as well as he, under great official responsibilities, should place a blind confidence in an estimate, supported by no particular, and of which not a single item of that kind, so far as I have ever heard pretended, does, in fact, exist.

But, in truth, there is not only no intrinsic reason for giving credit to the accuracy of this blunt estimate of the Secretary of War; but there is, in the nature of things, a perfect evidence that it cannot be accurate. There are, he tells us, forty-five ports and harbors in the United States, great and little, to be effectually protected. And for all these, he estimates the cost of fortifications to be nine hundred thousand dollars—twenty thousand dollars to each city, fort and harbor! Is there one port in the United States which will not require a greater expenditure? A sum less than very many men of fortune expend upon a single mansion-house! But when we take into consideration, that there are, among these, fifteen great cities and ports, which require a most liberal defence, to call such an estimate "effectual protection," is little other than an insult. The city of New York is entitled to an amount equal to the sum proposed for all.

Many gentlemen view this subject very lightly. I view it very seriously. Masses of men, who have strength, and are united by common interest, and combined in a political body, will have protection. If they cannot gain it by supplication, they will get it by force. I utter this, not as a threat, but only state it as the inevitable result, from the passions and the interests of men. The first shell that bursts in New York will deprive this Union, to say the least, of the revenues of that city. If you take the fruits of its commercial industry, you must yield protection, in some degree proportionate to the importance of its wealth and commerce. So long as the danger seems at a distance, the people will remain insensible to it. But let it come, let it be felt, and the ties of your Constitution are *paper*.

"But the expense of adequate protection is enormous." Ah! there's the rub. The Secretary of War tells us, that "the aggregate of his estimate is such as circumstances permitted." And almost every gentleman has had reference to the surpluses of our revenue. There are eight millions of dollars in the Treasury. And we are all on the scramble to have our proportion of that sum, in that species of warlike apparatus which is our particular predilection. One wants gunboats, another fortifications, another frigates, another arms for the militia; and each has a steady eye, so to limit the wishes of his neighbor, as that enough of the eight millions may be left to gratify his own. I have looked into the Constitution very carefully, and I find not a word there, concerning "surpluses in the Treasury." The object of union is expressed with great precision and simplicity. "To provide for the common defence." The language, which the people speak to us, is, "Cover us with your shield." They make no stipulations as to the cost. They want protection. Take what is adequate. Less than this is a failure in duty; it is a failure in economy. Estimate the effectual protection of the ports and harbors of the United States at the most extravagant rate ever proposed, and the sum is less than any one of our capitals would willingly pay, rather than suffer an invasion. The sack of one city would transcend, in destruction, the amount of such an adequate appropriation. For these reasons, I am in favor of the greatest sum proposed to be applied to this object; not because this is certainly sufficient, but because it approximates nearer to sufficiency than anything offered. The sum recommended by the Secretary of War is obviously wholly inadequate. Call it by what name you will, the inhabitants of the cities will not deem it protection.

When Mr. Quincy had concluded his speech, about four o'clock—a motion being made for the Committee to rise and report progress, was negatived, 51 to 50.

The question being of course first taken on the highest sum proposed, $2,500,000, was negatived—ayes 15.

The question then being taken on the sum of one million and a half, was negatived—ayes 44.

On motion of Mr. Cook, a question was taken on the sum of $1,250,000 and lost—ayes 41.

The question was then taken on the sum of one million dollars, and carried—ayes 106.

The second section, containing the same provisions as the bill from the Senate already passed for erecting gunboats, was then, on motion of Mr. Blount, stricken out.

When, the bill being gone through, the Committee rose and reported it; and the House immediately adjourned.

Thursday, December 17.

Mr. Nicholas R. Moore, from the Committee of Accounts, to whom was referred, on the third instant, the memorial of Thomas Claxton, Doorkeeper to this House, made a report thereon; which was read and considered: Whereupon,

Resolved, That Thomas Claxton be, and he is hereby, authorized to employ, under his immediate direction, one additional assistant, five servants, and two horses; for the purposes of performing such services and duties as are usually required by the House of Representatives, during the present and next session of Congress, and for four days after the termination of each; and that he be allowed therefor nine dollars per day, and be paid out of the fund appropriated for the contingent expenses of the House.

CONTESTED ELECTION.

Mr. Findley, from the Committee of Elections, to whom was referred, on the third ultimo, a letter and memorial from Duncan McFarland, stating his claim to a seat in this House, in the room of John Culpepper, who hath been returned as the member for the seventh elective district in the State of North Carolina; and to whom were also referred, during the present session, sundry other documents in relation to the contested election of the said John Culpepper; made a report thereon; which was read, as follows:

"That the claim of the petitioner is not grounded on Constitutional qualifications, but on the law of North Carolina, prescribing the time, place, and manner, of holding elections for Representatives to Congress. By a law of that State, passed 1802, it is enacted that elections for Representatives to Congress shall be held on the same days and at the same places as were before that time prescribed by law for holding elections for members to represent the several counties in the General Assembly of that State; that the same is to be conducted by the sheriffs of the several counties within the State, and the deputies of said sheriffs, in like manner as the annual elections of the members of the General Assembly are, except that the inspectors of the elections and clerks of the polls shall be sworn to act with justice and impartiality; which oath shall be administered by any justice of the peace then present. That no person shall vote at any election except in the county where he resides: that no person shall vote more than once in any election for members of the General Assembly, or for a Representative in Congress: that elections for members of Congress shall be conducted by the returning officer in the same manner as the elections for members of the General Assembly heretofore had been.

"In the act passed 1784, for directing the method of electing members of the General Assembly, &c., it is enacted that the returning officer shall keep the election open two days and no longer; and the returning officer shall, at sunset of the first day, in presence of the inspectors, put his seal on the place to be made for the reception of the tickets, which, when he shall continue the election, shall be removed the succeeding day.

"By another act, passed 17th December, 1805, it is directed that the elections which shall be held in the counties of Onslow and Richmond shall be on the second Thursday in August in every captain's company, at the places fixed on by them for holding the petit musters. And it is enacted, section seven, that the elections for members of Congress and for Electors to vote for the President and Vice President of the United States shall be held in the said counties at the aforementioned places, and in the same manner, subject to the same rules and restrictions as other elections within this State.

"Duncan McFarland states, in his petition, that the certificate of John Culpepper's election was fraudulently and illegally obtained, in direct violation of the laws and constitution of the State of North Carolina, which he proposes to prove by statements and depositions accompanying his petition.

"The committee having examined Duncan McFarland's statements and depositions, find numerous irregularities and abuses alleged, and supported by numerous depositions; but as no law of Congress now exists directing the manner of taking testimony in cases of contested elections, or for compelling witnesses and parties to attend when called upon, many of the depositions transmitted by the petitioner in support of his statements, being taken *ex parte*, could not be admitted by the committee.

[Such as they did admit go to prove the following facts, to wit:* that in some of the election districts, the inspectors and clerks were not sworn at all; that in others they were sworn after the election, though before the return; while in others it appeared doubtful, from the testimony, whether they were sworn or not.]

"No full official lists of the polls, or number of votes given to the parties contesting, were laid before the committee; but both parties agree that the sitting member had 2,750, and that Duncan McFarland had 2,701; that consequently John Culpepper had a majority of 49 votes.

"From the above recited testimony, admitted by the committee, it appears that the inspectors and clerks officially employed in conducting the elections in Richmond, Anson, and Montgomery counties, do not appear to have been sworn as the law of North Carolina expressly directs, and that the votes given in some of these counties, and at some elections in other counties, not being received by officers legally qualified, ought to be rejected. On rejecting the returns of Richmond, Anson, and Montgomery counties, in which it appears, by the list of voters and testimony admitted, that John Culpepper had a majority of 1,578 votes, gives to Duncan McFarland a large majority of votes in these counties. Some depositions were laid before the committee respecting the elections in Moore county, taken at the instance of a friend of John Culpepper, in his absence; but though they go to prove that the elections in Moore county were not conducted agreeably to law, yet, being taken *ex parte*, they were [not] admitted.

"From the testimony admitted, it appears that John Culpepper is not entitled to a seat in the House, he not having a majority of votes legally taken; but though Duncan McFarland appears to have a large majority of votes taken agreeably to law, yet the committee are of opinion that the truth of this is doubtful; they are the more confirmed in this opinion, from the sitting member having expressed his opinion that if he had time allowed him to make a scrutiny, he would prove the elections held in the other counties were also conducted contrary to law.

"The committee, however, believing that the great object for which the power of judging of the election of members was vested in Congress, was to secure to the people a representation of the majority of the citizens, the elections of Richmond, Anson, and Montgomery being rejected, give a majority of the votes taken in Moore and Cumberland counties to Duncan McFarland, viz: a majority of two counties out of five, which compose the Congressional district, and the votes of three counties are lost.

"The committee are of opinion that, even presuming the votes in Moore and Cumberland to have been legally taken, it would be improper to deprive the other three counties of a representation for the fault of their election officers, &c., therefore think it most proper to give the citizens of that district an opportunity to have another election, and for this purpose submit the following resolution:

"*Resolved*, That, from the testimony laid before and admitted by the committee, it appears that John Culpepper is not entitled to a seat in this House."

The report was referred to a Committee of the Whole on Tuesday next.

UNIVERSITY OF VINCENNES.

Mr. NEWTON, from the Committee of Commerce and Manufactures, to whom was referred, on the twentieth ultimo, the petition of the Board of Trustees of the University of Vincennes, in the Indiana Territory of the United States, made a report thereon; which was read and considered. The report is as follows:

* The evidence, in extenso, is here omitted, and the general result abridged from the report.

The petitioners state that the Legislature of the Indiana Territory, in the year 1806, passed an act incorporating a University in the district of Vincennes, styled the University of Vincennes; and that the same act authorized the petitioners to dispose of a small part of the land appropriated by an act of Congress, for the purpose of erecting the necessary buildings for said institution. The petitioners state that, as the land belonging to the institution cannot be leased at present to advantage, they pray that Congress will pass a law laying a small tax on salt made at the public works in that Territory, and also on Indian traders, for the support of the said institution, until the other institutions in the Territory are organized, and can be benefited by the fund accruing therefrom.

The committee have given to the petition of the trustees of the University of Vincennes that deliberate attention which its importance demands. They are sensible of every disposition that can be friendly to institutions, the objects of which are to inculcate and disseminate knowledge of every kind. The people of no nation can be so deeply interested in promoting and encouraging the sciences as the citizens of a Republic. They are frequently called upon personally to perform public duties of high concern, on the right discharge of which the happiness of individuals and the prosperity of the community depend. Information in the mass of the citizens is one of the best securities that can be devised against the abuses of power; and it operates no less forcibly in checking and restraining the aspiring ambition and subtle arts of those to whose care is confided the public welfare.

As public and private virtues spring from and are fostered and matured by true knowledge, it becomes one of the first obligations of this Government, if it can constitutionally exercise the power, to take under its patronage institutions that are calculated to insure its diffusion.

The committee will inquire what considerations have been given to a subject of so much moment by the National Government? The Territories of the United States are under the superintending authority of the General Government.

In the acts of Congress we are, therefore, to look for the care and solicitude they had a right to expect from their common guardian. As the district of Vincennes, in the Indiana Territory, is brought into view by the petition of the trustees of the Vincennes University, it becomes the duty of the committee to ascertain whether the bounty of the General Government to that Territory has been sufficiently large. By an act of the 26th of March, 1804, making provision for the disposal of the public lands in the Indiana Territory, and for other purposes, a section of land, equal to 640 acres, in each township, is reserved for the support of public schools; and one entire township is set apart in each of the three districts into which that Territory is divided for the use of seminaries of learning. To the district of Vincennes is allotted one entire township, which contains 23,040 acres of land. The price of an acre is estimated at two dollars; and the value of the donation amounts fully to forty-six thousand and eighty dollars. On this statement the committee are willing to rest the claim of Congress to the gratitude of the citizens of that Territory and their posterity, for the munificent allotments of land which have been made for the promotion of the sciences. The committee are constrained to notice the prayer of the petitioners. It is, that a law may be passed "laying a small tax on salt made at public works in that Territory, and also a tax on Indiana traders, for the support of the Vincennes University, until the other seminaries are organized, and are in a situation to participate in the revenue raised and collected from those taxes." The committee will here take the liberty of observing that, whenever the population of that Territory shall be so advanced and increased as to require seminaries of learning on the extensive scale of universities, the liberal donations of the General Government will be found to be commensurate with the views of the petitioners and with the just and laudable intentions of the donor. The reservation of the salt springs for future disposal in that Territory evidently points out the design of Congress, which was to furnish a necessary of life at a moderate price, by keeping and preserving the source of it from the monopoly of speculators. The committee are not a little surprised that the enlightened policy of Congress should escape the notice and penetration of so intelligent and so respectable a body of men as the trustees of the University of Vincennes.

The committee flatter themselves that the withholding of their assent from the prayer of the petition will be justified by that liberal mode of thinking which is inspired by the sciences, and by that true spirit of justice which equally and impartially regards the rights of all.

With deference to the House, they submit the following resolution:

Resolved, That, ample provision having already been made for the support of public schools and for seminaries of learning in the district of Vincennes, the prayer of the trustees of the University of Vincennes is unreasonable, and ought not to be granted.

The report was agreed to.

DUTIES ON SALT.

Mr. G. W. Campbell said, that by a law passed at a former session, a part of the duty on salt had ceased, and the remaining part of the duty being 12½ cents per bushel, and the duties constituting what was generally called the Mediterranean fund would expire on the first of January next. In the report made by the Secretary of the Treasury this was mentioned as one of the first measures which might be resorted to in case our situation required additional taxation. In order to bring that subject before the House, that they might determine whether at the present crisis it was necessary to continue the Mediterranean fund and the duty on salt, he moved the following resolution:

Resolved, That the Committee of Ways and Means be instructed to inquire into the expediency of *continuing for a limited time the duties now payable by law on imported salt; and of* continuing in force for a limited time the law imposing the duties called the Mediterranean fund; and that they report thereon by bill or otherwise.

This resolution being under consideration,

Mr. M. Clay moved to strike out the clause of the resolution which is in italics.

Mr. G. W. Campbell said, the resolution proposed only an inquiry. Large sums had been voted this session, and the non-importation act had gone into operation. While so much was done to empty the Treasury, he thought it time to do something toward filling it.

Mr. DANA conceived that no harm could result from a mere inquiry into the subject.

Mr. LLOYD could perceive no need of any inquiry if the House were predetermined against the continuance of the salt duty. The voice of the nation had been fully expressed on the subject, and, for his part, he would not agree to any tax on salt, if there was not a cent in the Treasury, nor if war was already declared and the city of New York in the hands of the enemy. He had no objection to the continuance of the Mediterranean duties, if it were necessary, though they were not confined to articles of luxury.

Mr. CROWNINSHIELD was in favor of the resolution as it stood. The House would not be committed by agreeing to the reference. The salt duty was oppressive, because that article was taxed proportionably higher than others, and he had rather double the Mediterranean duties than continue those on salt. But he had not made up his mind on the subject. If money is wanted, he would agree to a salt tax, to a land tax, to a tax on anything. The people will bear any burden requisite to repel an enemy; they will pay any money in defence of their rights.

Mr. UPHAM stated his impressions to be against the continuance of the tax; but, as any resolution, from a respectable quarter, was entitled to decent treatment, he was willing to refer it, as by a reference the House would not pledge themselves to vote finally in favor of it.

It was the peculiar province of the Committee of Ways and Means to devise certain ways and means for supplying the Treasury with the necessary revenue to support the Government and defend the country. This resolution had been introduced by the chairman of that committee, and Mr. U. was disposed to treat it with respect, by giving it the usual direction. As to the evils of an inquiry, the same objection would apply to every inquiry in that House; and, if they were deterred from doing their duty, lest it should give rise to erroneous impressions among the people, they might as well adjourn at once and go home.

Mr. MACON agreed that, by referring the resolution, the House did not commit themselves to vote in favor of it; but, if the House were already determined against the tax, it would be needless to refer the resolution to a committee. In an extreme case, he would go as far as any man; but he had rather have a poll tax than a salt tax. It was harder on the poor than any other tax. He hoped it would never be renewed; he would rather tax anything else.

Mr. DESHA was against the motion to strike out what related to the duty on salt. He conceived a duty on salt the most equitable that could be imposed. It operates equally on all classes of the community. Large appropriations have been made this session, and, as money was wanted, he was in favor of continuing the duty.

Mr. CHITTENDEN was, generally, in favor of referring the resolutions, even if he disliked them; but he did not perceive that any good purpose could be answered by the proposed inquiry, as he trusted the House would be decidedly against continuing the tax. It operates unequally. He was willing to impose new taxes if they were wanted, but he could never be persuaded to vote for any tax on salt.

Mr. W. ALSTON said, if other revenues were struck off, the House must agree to this. He was in favor of the reference.

Mr. M. CLAY observed that, if you would go through the country, from one end to the other, you would find a clamor against the salt tax. He had known that article so dear that it took the profit of the yearly labor of one prime hand to purchase only a bushel.

Mr. THOMAS was in favor of the reference. It was proposed not to lay a new tax, but only to continue an old one a little longer.

Mr. SLOAN was against the inquiry. I do not, said he, admire all the observations of the gentleman from Kentucky, (Mr. DESHA.) If I rightly understand the opinion of my constituents, they consider the salt tax the most unjust, unequal, and oppressive that can be laid. Salt is necessary for our food and for stock, and the tax bears hard on the poor in particular. Even an inquiry would have a bad tendency, for it would blast the hopes of the people, who had been looking for a repeal of the whole duty.

Mr. SOUTHARD thought that it would be more advisable, in the event of a war, to grant a bounty than lay a tax on the importation of salt.

Mr. BLOUNT observed that, in his opinion, members had better record their votes than waste time in debating the subject. He, therefore, moved that the yeas and nays be taken, and expressed a hope that there would be no further discussion.

The yeas and nays were agreed to be taken.

Mr. MILNOR deemed the subject before the House to be of the last importance. There had been, indeed, a clamor raised, in the public prints, against the tax on salt, but he believed there had been little elsewhere. If the poor could avoid the payment of all other duties, it was with him a reason why they should be charged with that on salt, for all who enjoy the benefit of Government ought to contribute something toward its support. When the duty of eight cents was taken off, he did not believe that a retailer of ten thousand ever lowered their price. Of all articles, which pay a duty, there is not one which is more conveniently taxed. It is imported in such quantities as precludes all attempts at smuggling. It was, to Mr. M., a novel idea that stock could not be raised without salt. The best cattle were raised in his country without licking a dust of salt.

Mr. M. CLAY, with the leave of the House, spoke a third time. He said he had thought every man in the country understood the subject better than some of the members of the House appeared to do. The gentleman from Pennsylvania must live near a salt marsh. There stock do not need any salt. Mr. C. traced the progress of salt from the importer, through the hands of the wholesale dealer and retailer, to the consumer, with a view to show how the price of the article is affected by the duty. He had known it sold at four dollars per bushel.

Mr. Quincy thought it very extraordinary in the gentleman from North Carolina (Mr. Blount) to demand the yeas and nays, with a view to arrest the discussion. He surely ought to have known that the demand was calculated to protract the debate. As their votes would be recorded on the Journal, he, Mr. Q., conceived it his duty to assign the reasons which would influence his decision.

It appeared, from the documents in possession of the House, that the quantity of salt imported annually is about three millions. Supposing, then, our population to be six millions, it will leave half a bushel of salt for each person, so that at the rate of twelve cents a bushel, it will be equivalent to a poll tax of six cents upon each person. So small a burden as this cannot be a subject of serious complaint. So far, however, as salt is consumed by stock and slaves, this is a tax on property. Large salt manufactories had been stopped by a repeal of the duty on salt; but, if it is continued, they may go into operation again, and become, especially in periods of war, of great advantage.

Mr. Stedman had the last year voted for the repeal of the duty on salt, because the Administration had told us they could dispense with that duty, and because the people would thereby be relieved of a burden; he was now against its continuance. Should a war take place and money be wanted, other sources of revenue might be resorted to, less objectionable. As to the home manufactories of salt, a war would operate as a sufficient encouragement without the duty on imported salt.

If the reference should be agreed to as presented to the House, and the inquiry take place, that very circumstance alone would, in Mr. S.'s opinion, encourage speculations among the dealers in that article. It would impress the public with the belief that a tax would be laid, and the price of salt would be immediately enhanced beyond the amount of duty contemplated to be continued; under these impressions, he hoped the amendment would prevail.

Mr. Lloyd spoke at some length against the salt tax. He considered it unequal and oppressive; luxuries were the proper objects of taxation; six cents was a trifle, and so was a hundred dollars with some men, but to a poor man six cents was a great sum.

Mr. Rowan professed himself not sufficiently informed with respect to the propriety of further continuing the duty on salt. It had been said that there had been a great clamor against this tax throughout the Union. He had never heard any complaint in Kentucky; he had not yet formed any decisive opinion, and wished the subject might be investigated. Why the yeas and nays had been called for, he could not conceive; for no member is pledged by voting in favor of referring the resolution.

Mr. G. W. Campbell thought it singular that the merits of the salt duty should be considered in this motion. When twelve cents was continued till the first of January, it was understood to be done so as to enable Congress, if necessary, to continue it for a longer time. The continuance of this tax is recommended by the Secretary of the Treasury, in case of war, and the Committee of Ways and Means, in conversation, thought an inquiry into the subject would be proper.

The gentleman from Virginia (Mr. Clay) says there is no use in an inquiry. Perhaps he is already thoroughly acquainted with the subject; perhaps he ie competent to decide at once on every question of finance. If so, this great stock of financial knowledge has been hitherto concealed from the House.

Mr. J. Montgomery said that, as the yeas and nays were to be taken, he would assign a few reasons for the vote he should give. He had understood that the tax had been continued to the first of January, in order that Congress might further continue it, if necessary; and, in case of war, he was not prepared to say he would not continue it. He thought it would be prepared, at least, to refer the subject, and let the Committee of Ways and Means inquire and report. The House would not be pledged by a reference.

At the request of Mr. Randolph, the report of the Secretary of the Treasury was read.

Mr. M. Clay had leave a second time to speak. He hoped this was the last time he should ever be compelled to answer any personal observations. He had intended nothing severe on the gentleman from Tennessee, (Mr. G. W. Campbell,) but he hoped that gentleman, or the Committee of Ways and Means, did not claim all the financial knowledge in the House. You know, and every one knows, how we are pestered with men who think nothing can pass the House, unless they speak upon it; and the evil seems to be catching. You (the Speaker) know, and every member knows, that your Chair is not filled with the best talents in the House. You know that the best talents are not selected as the heads of the committees. There are men, who are not so vociferous, who are better qualified than those who speak so much. Mr. C. said, this was the most windy place he ever knew, there was more wind out of the House, and in the House, than any place he had ever seen.

Mr. G. W. Campbell insisted that he had said nothing concerning the talents of the gentleman last up. He did not rise to compare his own talents with those of that gentleman. The House knew them both, and could decide between them. Mr. C. appealed to the House, whether he was in the habit of boring them with long speeches. He said, he seldom spoke at length, and took up very little time in debate.

Mr. Lyon observed, that his constituents were not affected by the salt tax, but he had a regard for his own character, and for that of the Administration, whom he had helped to bring into power. His character was involved in theirs, and he hoped they would never be disgraced by continuing this tax.

The question being taken by yeas and nays, on striking out of the resolution that part which respected the salt tax, it was resolved in the affirmative—yeas 78, nays 45, as follows:

YEAS—Lemuel J. Alston, David Bard, Joseph Barker, Burwell Bassett, William W. Bibb, William Blackledge, John Blake, jun., Thomas Blount, John Boyle, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, John Campbell, Peter Carlton, Epaphroditus Champion, Martin Chittenden, Matthew Clay, John Clopton, Orchard Cook, John Culpepper, John Dawson, James Elliot, William Ely, William Findley, Meshack Franklin, Barent Gardenier, James M. Garnett, Charles Goldsborough, Peterson Goodwyn, William Hoge, James Holland, David Holmes, Benjamin Howard, Daniel Ilsley, Richard M. Johnson, Walter Jones, James Kelly, Philip B. Key, Nehemiah Knight, John Lambert, Joseph Lewis, jr., Edward Lloyd, John Love, Matthew Lyon, Nathaniel Macon, Daniel Montgomery, jr., Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, John Morrow, Jonathan O. Mosely, Roger Nelson, Timothy Pitkin, jun., John Pugh, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Samuel Riker, John Rowan, James Sloan, Dennis Smelt, John Smilie, Samuel Smith, John Smith, Henry Southard, Richard Stanford, William Stedman, Peter Swart, John Thompson, Abram Trigg, James I. Van Allen, Archibald Van Horne, Jesse Wharton, Robert Whitehill, Isaac Wilbour, Alexander Wilson, and Richard Winn.

NAYS—Willis Alston, jun., Ezekiel Bacon, George W. Campbell, John Chandler, Jacob Crowninshield, Richard Cutts, Samuel W. Dana, John Davenport, junior, Josiah Deane, Joseph Desha, Daniel M. Durell, Francis Gardner, Isaiah L. Green, John Harris, John Heister, William Helms, Reuben Humphreys, Robert Jenkins, Edward St. Loe Livermore, Robert Marion, Josiah Masters, William McCreery, William Milnor, John Montgomery, Gurdon S. Mumford, Thomas Newbold, Thomas Newton, John Porter, Josiah Quincy, Jacob Richards, Matthias Richards, John Russell, Lemuel Sawyer, Jedediah K. Smith, Clement Storer, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, John Taylor, David Thomas, George M. Troup, Jabez Upham, Killian K. Van Rensselaer, Marmaduke Williams, and James Witherell.

The question then recurred on the resolution as amended. It now proposed only an inquiry into the expediency of continuing the Mediterranean duties.

Mr. RANDOLPH was against the resolution. From the report of the Secretary of the Treasury it did not appear to be necessary. The Secretary states that a recurrence to additional taxes will be necessary only in case of war loans, or when the revenue shall fall short of the expenditures. Mr. R. said, he had before called for the reading of the Secretary's report, as that report evinced without comment that any additional taxes were not requisite. But, on account of the confusion in the House, the report was not heard. He hoped the Clerk would read it again, and distinctly too.

The report being read, Mr. R. observed, that it would be seen that that was precisely as much a recommendation to double all the existing taxes as to continue the Mediterranean fund.

Mr. GEORGE W. CAMPBELL contended that he had not mistaken the report of the Secretary of the Treasury. Whether the revenue will fall short or not, is yet problematical. The non-importation act has gone into operation, and it is proper to inquire how far the revenues of the country may be reduced by that measure? It is the private opinion of the Secretary, and he conceived himself in order while stating it to the House, that it was proper to make this inquiry at the present time.

Mr. RANDOLPH.—The Secretary of the Treasury states 15,800,000 dollars for the revenue of the ensuing year, and we are now told that it is proper to inquire, what will be the deficiency? There is no deficiency; there can be none the ensuing year. Mr. R. regarded only the official, responsible communications from the Executive officers.

Mr. W. ALSTON was in favor of the resolution. If we have war, there will be eventually a deficiency of revenue, and now is the proper time to examine the subject.

Mr. RANDOLPH said, if any tax were wanted, he would vote it cheerfully; and the one proposed is as good as any; but it is clear, from the Secretary's report, that none is wanted.

Mr. J. MONTGOMERY said that, if there should be no war, he would agree to give up the Mediterranean duties. The gentleman from Virginia (Mr. R.) had himself introduced three resolutions, and what would be the expense of carrying them into execution no man could tell. Large sums had been voted for gunboats and fortifications, and was this a proper time to abandon our revenues?

Mr. RHEA of Tennessee, Mr. SMILIE, and Mr. FINDLEY, said a few words in favor of the resolution.

The question being taken on the resolution, as amended, it was resolved in the affirmative by yeas and nays—yeas 107, nays 14, as follows:

YEAS—Evan Alexander, Lemuel J. Alston, Willis Alston, jr., Ezekiel Bacon, David Bard, Joseph Barker, Burwell Bassett, William W. Bibb, William Blackledge, John Blake, jr., Thomas Blount, John Boyle, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, George W. Campbell, Peter Carlton, John Chandler, Martin Chittenden, Matthew Clay, John Clopton, Orchard Cook, Jacob Crowninshield, John Culpepper, Richard Cutts, Samuel W. Dana, John Dawson, Josiah Deane, Joseph Desha, Daniel M. Durell, William Findley, James Fisk, Meshack Franklin, Francis Gardner, Peterson Goodwyn, Edwin Gray, Isaiah L. Green, John Harris, John Heister, William Helms, James Holland, David Holmes, Reuben Humphreys, Daniel Ilsley, Robert Jenkins, Richard M. Johnson, Walter Jones, James Kelly, Thomas Kenan, Philip B. Key, William Kirkpatrick, John Lambert, Edward St. Loe Livermore, Edward Lloyd, John Love, Nathaniel Macon, Robert Marion, Josiah Masters, William McCreery, William Milnor, Daniel Montgomery, jun., John Montgomery, Nicholas R. Moore, Thos. Moore, Jeremiah Morrow, John Morrow, Gurdon S. Mumford, Roger Nelson, Thomas Newbold, Thomas Newton, John Porter, John Pugh, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Matthias Richards, Samuel Riker, John Rowan, John Russell, Lemuel Sawyer, Ebenezer Seaver, James Sloan, Dennis Smelt, John Smilie, Jedediah K. Smith, Samuel Smith, John Smith, Henry Southard, Richard Stanford, Clement Storer, Peter Swart, Samuel Taggart, John

Taylor, David Thomas, John Thompson, Abram Trigg, George M. Troup, Jabez Upham, James I. Van Allen, Archibald Van Horne, Killian K. Van Rensselaer, Jesse Wharton, Robert Whitehill, Isaac Wilbour, Marmaduke Williams, and James Witherell.

NAYS—John Campbell, Epaphroditus Champion, Barent Gardenier, James M. Garnett, Charles Goldsborough, William Hoge, Joseph Lewis, junior, Jonathan O. Mosely, Timothy Pitkin, jr., Josiah Quincy, John Randolph, William Stedman, Lewis B. Sturges, and Benjamin Tallmadge.

FRIDAY, December 18.

Mr. HOLLAND, from the committee to whom was referred on the fourteenth instant, a petition of Anthony Boucherie, of the city of Philadelphia, sugar refiner, reported a bill to extend certain privileges, as therein mentioned, to Anthony Boucherie; which was read twice and committed to a Committee of the Whole on Monday next.

On motion of Mr. BASSETT,

Resolved, That the petition of the Vestry of the Protestant Episcopal Church, in the town of Alexandria, and District of Columbia, presented on the twelfth of January last, and praying that an act of incorporation may be passed, vesting in the said church such powers, privileges, and benefits, as may be deemed proper, be referred to Mr. BASSETT, Mr. BARD, and Mr. TAGGART; to examine and report their opinion thereupon to the House.

Mr. THOMAS, from the committee to whom was referred, on the third ultimo, a letter and representation of William Eaton, and a communication from Hamet Bashaw Caramalli, Ex-Bashaw of Tripoli, made a report thereon; which was read, and referred to a Committee of the Whole on Tuesday.

Mr. FINDLEY, from the committee to whom was referred, on the thirtieth ultimo, a petition of the Associate Reformed or Presbyterian Congregation in the City of Washington, reported a bill for incorporating the Associate Reformed Church, in the City of Washington; which was read twice and committed to a Committee of the Whole on Monday next.

The House proceeded to consider the amendments reported yesterday from the Committee of the Whole to the bill supplementary to an act, entitled "An act for fortifying the ports and harbors of the United States, and for building gunboats."

The first amendment, relative to works other than fortifications, being agreed to, and the second relative to the sum yesterday agreed to, being under consideration,

Mr. MASTERS inquired of the Speaker, whether it would then be in order to amend that sum?

Some discussion took place on this subject; when a Message was announced from the President of the United States. The business then under consideration was postponed.

The SPEAKER declaring the Message confidential, the galleries were closed, and the House went into secret session.

EMBARGO.

The following is the Message from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

The communications now made, showing the great and increasing dangers with which our vessels, our seamen, and merchandise, are threatened, on the high seas and elsewhere, from the belligerent Powers of Europe; and it being of the greatest importance to keep in safety these essential resources, I deem it my duty to recommend the subject to the consideration of Congress, who will doubtless perceive all the advantage which may be expected from an inhibition of the departure of our vessels from the ports of the United States.

Their wisdom will also see the necessity of making every preparation for whatever events may grow out of the present crisis.

I ask a return of the letters of Messrs. Armstrong and Champagny, which it would be improper to make public. TH. JEFFERSON.

Extract of a letter from the Grand Judge, Minister of Justice, to the Imperial Attorney General for the Council of Prizes.

PARIS, *September* 18, 1807.

SIR: I have submitted to his Majesty, the Emperor and King, the doubts raised by his Excellency, the Minister of Marine and Colonies, on the extent of certain dispositions of the imperial decree of the 21st of November, 1806, which has declared the British Isles in a state of blockade.

The following are his Majesty's intentions on the points in question:

1. May vessels of war, by virtue of the imperial decree of the 21st of November last, seize on board neutral vessels, either English property, or even all merchandise proceeding from the English manufactures or territory?

ANSWER.—His Majesty has intimated that, as he did not think proper to express any exception in his decree, there is no ground for making any in its execution in relation to any whomsoever, (*à l'égard de qui que ce peut être.*) His Majesty has postponed a decision on the question, whether armed French vessels ought to capture neutral vessels bound to or from England, even when they have no English merchandise on board. REGNIER.

The Message, and documents accompanying it, were severally read.

Ordered, That the letters referred to in said Message be returned to the President of the United States, agreeably to his request.

On motion of Mr. RANDOLPH, that the House do come to the following resolution:

Resolved, That an embargo be laid on all shipping the property of citizens of the United States, now in port, or which shall hereafter arrive:

And the question being put, that the House do agree to the said resolution, and, upon the question thereupon, the yeas and nays being demanded by one-fifth of the members present, and debate arising, a motion was made by Mr. MACON, that the resolution do lie on the table; and it was resolved in the affirmative.

A message from the Senate, by Mr. OTIS, their Secretary:

Mr. Speaker: The Senate have, in confidence, directed me to inform this honorable House that they have passed a bill, entitled "An act laying an embargo on all ships and vessels in the ports and harbors of the United States," in which bill they desire the concurrence of this House."

The said bill was received, read the third time, and committed to a Committee of the Whole on the state of the Union on this day.

On motion of Mr. CROWNINSHIELD,

Resolved, That this House will immediately resolve itself into a Committee of the Whole on the said bill.

The House accordingly resolved itself into the said Committee; and, after some time spent therein, the SPEAKER resumed the Chair, and Mr. MASTERS reported that the Committee had had the said bill under consideration, but not having time to go through the same, had directed him to ask for leave to sit again.

Resolved, That this House will, to-morrow, again resolve itself into a Committee of the Whole on the bill, entitled "An act laying an embargo on all ships and vessels in the ports and harbors of the United States."

And then the House adjourned.

SATURDAY, December 19.

No legislative business was transacted in the House to-day.

In secret session, on motion of Mr. STANFORD, that the Committee of the Whole to whom was referred the bill, entitled "An act laying an embargo on all ships and vessels in the ports and harbors of the United States," be discharged from the consideration thereof:

And, after debate on the said motion, the question was taken thereupon, and passed in the negative.

The House then resolved itself into a Committee of the Whole on the said bill; and, after some time spent therein, the Committee rose, reported progress, and had leave to sit again.

MONDAY, December 21.

The House met but transacted no Legislative business.

THE EMBARGO ACT.

In secret session, the House again resolved itself into a Committee of the Whole on the bill from the Senate, entitled "An act laying an embargo on all ships and vessels in the ports and harbors of the United States;" and, after some time spent therein, rose, and reported the bill, with several amendments; which were twice read, and, on the question severally put thereupon, agreed to by the House.

A motion being made, by Mr. CROWNINSHIELD, to amend the amendment reported by the Committee of the Whole, by striking out the words "letters of marque excepted," and the word "retained," in the tenth line of the amendment, and insert the word "re-landed;" and the word "retained," in the twelfth line, and insert the word "re-landed:" Whereupon, it was resolved in the affirmative.

Ordered, That the said bill, with the amendments, be read a third time this day: Whereupon, the question was stated, that the bill sent from the Senate, entitled "An act laying an embargo on all ships and vessels in the ports and harbors of the United States," together with the amendments agreed to, do pass.

A motion being made by Mr. QUINCY, to amend the said bill, by adding a new section thereto, in the words following:

"*And be it further enacted*, That nothing in this act shall be construed to prohibit the sailing of any ship or vessel duly enrolled or licensed for carrying on the fisheries, with the usual tackle, apparel, and supplies, customary on a fishing voyage: *Provided*, That bond, with sufficient security, be previously given, that such ship or vessel shall not directly or indirectly carry on any commerce whatsoever, during the voyage, and shall return with her fishing fare to some port or place within the United States;"

And, on the question thereupon, it passed in the negative—yeas 45, nays 82, as follows:

YEAS—Willis Alston, jun., Ezekiel Bacon, Joseph Barker, Peter Carlton, Epaphroditus Champion, John Chandler, Martin Chittenden, Orchard Cook, Jacob Crowninshield, John Culpepper, Richard Cutts, Samuel W. Dana, John Davenport, jr., Josiah Deane, Daniel M. Durell, James Elliot, William Ely, Barent Gardenier, Francis Gardner, Isaiah L. Green, Wm. Hoge, Reuben Humphreys, Daniel Ilsley, William Kirkpatrick, Nehemiah Knight, John Lambert, Joseph Lewis, jr., Ed. St. Loe Livermore, Matthew Lyon, Robert Marion, Jeremiah Morrow, Jonathan O. Mosely, Timothy Pitkin, jr., Josiah Quincy, John Russell, Ebenezer Seaver, William Stedman, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, Jabez Upham, James I. Van Allen, Philip Van Cortlandt, Killian K. Van Rensselaer, and Isaac Wilbour.

NAYS—Lemuel J. Alston, David Bard, Burwell Bassett, William W. Bibb, William Blackledge, John Blake, jr., Thomas Blount, John Boyle, Robert Brown, William A Burwell, William Butler, Joseph Calhoun, George W. Campbell, John Campbell, Matthew Clay, John Clopton, Howell Cobb, John Dawson, Joseph Desha, William Findley, James Fisk, Meshack Franklin, James M. Garnett, Charles Goldsborough, Peterson Goodwyn, Edwin Gray, John Harris, John Heister, William Helms, David Holmes. Benjamin Howard, Robert Jenkins, Richard M. Johnson, Walter Jones, James Kelly, Thomas Kenan, Philip B. Key, John Love, Nathaniel Macon, Josiah Masters, William McCreery, William Milnor, John Montgomery, Nicholas R. Moore, Thomas Moore, John Morrow, Gurdon S. Mumford, Roger Nelson, Thomas Newbold, Thomas Newton, Wilson C. Nicholas, John Porter, John Pugh, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Matthias Richards, Samuel Riker, John Rowan, Lemuel Sawyer, James Sloan, Dennis Smelt, John Smilie, Jedediah K. Smith, Samuel Smith, John Smith, Henry Southard, Richard Stanford, Clement Storer, Peter Swart, John Taylor, John Thompson, Abram Trigg, George M. Troup, Archibald Van Horne, Jesse Wharton, Robert Whitehill, Marmaduke Williams, Alexander Wilson, Richard Winn, and James Witherell.

On motion of Mr. GARDENIER, that the doors be now opened, that the injunction of secrecy imposed on the members of this House respecting the bill now before them be taken off, and that all further proceedings relative to the said bill be had with open doors: and the question being put thereupon, it passed in the negative—yeas 36, nays 92, as follows:

YEAS—Lemuel J. Alston, John Campbell, Epaphroditus Champion, Martin Chittenden, John Culpepper, Samuel W. Dana, John Davenport, jr., James Elliot, William Ely, Barent Gardenier, James M. Garnett, Charles Goldsborough, Edwin Gray, William Hoge, James Kelly, Philip B. Key, William Kirkpatrick, Joseph Lewis, jr., Edward St. Loe Livermore, Matthew Lyon, Nathaniel Macon, Jonathan O. Mosely, Timothy Pitkin, jr., Josiah Quincy, John Randolph, John Rowan, John Russell, Dennis Smelt, Samuel Smith, William Stedman, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, Jabez Upham, Archibald Van Horne, and Killian K. Van Rensselaer.

NAYS—Willis Alston, jr., Ezekiel Bacon, David Bard, Joseph Barker, Burwell Bassett, William W. Bibb, William Blackledge, John Blake, jr., Thomas Blount, John Boyle, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, George W. Campbell, Peter Carlton, John Chandler, Matthew Clay, John Clopton, Howell Cobb, Orchard Cook, Jacob Crowninshield, Richard Cutts, John Dawson, Josiah Deane, Joseph Desha, Daniel M. Durell, William Findley, James Fisk, Meshack Franklin, Francis Gardner, Peterson Goodwyn, Isaiah L. Green, John Harris, John Heister, William Helms, James Holland, David Holmes, Benjamin Howard, Reuben Humphreys, Daniel Ilsley, Robert Jenkins, Richard M. Johnson, Walter Jones, Thomas Kenan, Nehemiah Knight, John Lambert, John Love, Robert Marion, Josiah Masters, Wm. McCreery, William Milnor, John Montgomery, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, John Morrow, Gurdon S. Mumford, Roger Nelson, Thomas Newton, Wilson C. Nicholas, John Porter, John Pugh, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Matthias Richards, Samuel Riker, Lemuel Sawyer, Ebenezer Seaver, James Sloan, John Smilie, Jedediah K. Smith, John Smith, Henry Southard, Richard Stanford, Clement Storer, Peter Swart, John Taylor David Thomas, John Thompson, Abram Trigg, George M. Troup, James I. Van Allen, Philip Van Cortlandt, Jesse Wharton, Robert Whitehill, Isaac Wilbour, Marmaduke Williams, Alexander Wilson, Richard Winn, and James Witherell.

On motion of Mr. MUMFORD to amend the said bill, in the second line, after the word "laid," by inserting the following words, "for and during the term of sixty days:" and the question being put thereupon, it passed in the negative—yeas 46, nays 82, as follows:

YEAS—William W, Bibb, William Blackledge, Jno. Blake, jr., John Campbell, Peter Carlton, Epaphroditus Champion, Martin Chittenden, Howell Cobb, John Culpepper, Samuel W. Dana, John Davenport, jun., James Elliot, William Ely, Barent Gardenier, James M. Garnett, Charles Goldsborough, William Hoge, Reuben Humphreys, James Kelly, William Kirkpatrick, Joseph Lewis, jr., Edward St. Loe Livermore, Matthew Lyon, Josiah Masters, William Milnor, Jonathan O. Mosely, Gurdon S. Mumford, Timothy Pitkin, jr., Josiah Quincy, John Randolph, John Rowan, John Russell, Samuel Smith, Richard Stanford, William Stedman, Lewis B. Sturges, Peter Swart, Samuel Taggart, Benjamin Tallmadge, David Thomas, John Thompson, Jabez Upham, James I. Van Allen, Philip Van Cortlandt, Archibald Van Horne, and Killian K. Van Rensselaer.

NAYS—Lemuel J. Alston, Willis Alston, jr., Ezekiel Bacon, David Bard, Joseph Barker, Burwell Bassett, Thomas Blount, John Boyle, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, George W. Campbell, John Chandler, Matthew Clay, John Clopton, Orchard Cook, Jacob Crowninshield, Richard Cutts, John Dawson, Josiah Deane, Joseph Desha, Daniel M. Durell, William Findley, James Fisk, Meshack Franklin, Francis Gardner, Peterson Goodwyn, Edwin Gray, Isaiah L. Green, John Harris, John Heister, William Helms, David Holmes, Benjamin Howard, Daniel Ilsley, Robert Jenkins, Richard M. Johnson, Walter Jones, Thomas Kenan, Philip B. Key, Nehemiah Knight, John Lambert, John Love, Nathaniel Macon, Robert Marion, William McCreery, John Montgomery, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, John Morrow, Roger Nelson, Thomas Newbold, Thomas Newton, Wilson C. Nicholas, John Porter, John Pugh, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Matthias Richards, Samuel Riker, Lemuel Sawyer, Ebenezer Seaver, James Sloan, Dennis Smelt, John Smilie, Jedediah K. Smith, John Smith, Henry Southard, Clement Storer, John Taylor, Abram Trigg, George M. Troup, Jesse Wharton, Robert Whitehill, Isaac Wilbour, Marmaduke Williams, Alexander Wilson, Richard Winn, and James Witherell.

On motion of Mr. QUINCY to amend the said bill, by adding a new section thereto, in the following words:

"*And be it further enacted*, That nothing in this act shall be construed to contravene any rights or privileges arising out of any treaty or treaties between any foreign nation and the United States:"

The question being taken thereupon, it passed in the negative—yeas 52, nays 75, as follows:

YEAS—Ezekiel Bacon, Burwell Bassett, William W. Bibb, Wm. Blackledge, John Boyle, John Campbell, Peter Carlton, Epaphroditus Champion, Martin Chittenden, Jacob Crowninshield, John Culpepper, Samuel W. Dana, John Davenport, jr., James Elliot, William Ely, Barent Gardenier, James M. Garnett, Charles Goldsborough, Edwin Gray, William Hoge, James Holland, Benjamin Howard, Reuben Humphreys, Robert Jenkins, James Kelly, Philip B. Key, William Kirkpatrick, Joseph Lewis, jr., Edward St. Loe Livermore, Matthew Lyon, Nathaniel Macon, Robert Marion, Josiah Masters, William Milnor, Jonathan O. Mosely, Timothy Pitkin, jr., John Pugh, Josiah Quincy, John Randolph, John Rowan, John Russell, Henry Southard, Richard Stanford, William Stedman, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, John Thompson, Abram Trigg, Jabez Upham, Archibald Van Horne, and Killian K. Van Rensselaer

NAYS—Lemuel J. Alston, Willis Alston, jr., David Bard, Joseph Barker, John Blake, jr., Thomas Blount, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, George W. Campbell, John Chandler, Matthew Clay, John Clopton, Howell Cobb, Orchard Cook, Richard Cutts, John Dawson, Josiah Deane, Joseph Desha, Daniel M. Durell, William Findley,

James Fisk, Meshack Franklin, Francis Gardner, Peterson Goodwyn, Isaiah L. Green, John Harris, John Heister, William Helms, David Holmes, Daniel Ilsley, Richard M. Johnson, Walter Jones, Thomas Kenan, Nehemiah Knight, John Lambert, John Love, William McCreery, John Montgomery, Nicholas R. Moore, Thomas Moore, John Morrow, Gurdon S. Mumford, Roger Nelson, Thomas Newbold, Thomas Newton, Wilson C. Nicholas, John Porter, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Matthias Richards, Samuel Riker, Ebenezer Seaver, James Sloan, Dennis Smelt, John Smilie, Jedediah K. Smith, Samuel Smith, John Smith, Clement Storer, Peter Swart, John Taylor, David Thomas, George M. Troup, James I. Van Allen, Philip Van Cortlandt, Jesse Wharton, Robert Whitehill, Isaac Wilbour, Marmaduke Williams, Alexander Wilson, Richard Winn, and James Witherell.

On motion of Mr. GARDENIER, that the House now adjourn; the question being taken thereupon, it passed in the negative—yeas 40, nays 81, as follows:

YEAS—Lemuel J. Alston, William W. Bibb, John Campbell, Epaphroditus Champion, Martin Chittenden, Howell Cobb, Orchard Cook, John Davenport, jr., James Elliot, William Ely, Barent Gardenier, James M. Garnett, Charles Goldsborough, Edwin Gray, Wm. Hoge, James Holland, Robert Jenkins, James Kelly, William Kirkpatrick, Joseph Lewis, jr., Edward St. Loe Livermore, Matthew Lyon, Josiah Masters, Wm. Milnor, Jonathan O. Mosely, Timothy Pitkin, jr., Josiah Quincy, John Rowan, John Russell, Dennis Smelt, Samuel Smith, Richard Stanford, William Stedman, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, Abram Trigg, Jabez Upham, Archibald Van Horne, and Killian K. Van Rensselaer.

NAYS—Willis Alston, jr., Ezekiel Bacon, David Bard, Joseph Barker, Burwell Bassett, John Blake, jr., Thomas Blount, John Boyle, Robert Brown, William Butler, Joseph Calhoun, George W. Campbell, Peter Carlton, John Chandler, Matthew Clay, John Clopton, Jacob Crowninshield, John Culpepper, Richard Cutts, John Dawson, Josiah Deane, Joseph Desha, Daniel M. Durell, William Findley, James Fisk, Meshack Franklin, Francis Gardner, Peterson Goodwyn, Isaiah L. Green, John Harris, John Heister, William Helms, David Holmes, Benjamin Howard, Daniel Ilsley, Richard M. Johnson, Walter Jones, Thomas Kenan, Philip R. Key, Nehemiah Knight, John Lambert, John Love, Robert Marion, William McCreery, John Montgomery, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, John Morrow, Gurdon S. Mumford, Roger Nelson, Thomas Newbold, Thomas Newton, Wilson C. Nicholas, John Porter, John Pugh, John Randolph, John Rhea of Tennessee, Jacob Richards, Matthias Richards, Samuel Riker, Lemuel Sawyer, Ebenezer Seaver, James Sloan, John Smilie, Jedediah K. Smith, Henry Southard, Clement Storer, Peter Swart, John Taylor, David Thomas, George M. Troup, James I. Van Allen, Philip Van Cortlandt, Jesse Wharton, Robert Whitehill, Isaac Wilbour, Marmaduke Williams, Alexander Wilson, Richard Winn, and James Witherell.

The question again recurring on the bill with the amendments: Whereupon, the question was stated that the said bill, with the amendments, do pass: it was resolved in the affirmative—yeas 82, nays 44, as follows:

YEAS—Lemuel J. Alston, Willis Alston, jr., Ezekiel Bacon, David Bard, Joseph Barker, Burwell Bassett, John Blake, jr., Thomas Blount, John Boyle, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, George W. Campbell, Peter Carlton, John Chandler, Matthew Clay, John Clopton, Orchard Cook, Jacob Crowninshield, Richard Cutts, John Dawson, Josiah Deane, Joseph Desha, Daniel M. Durell, William Findley, James Fisk, Meshack Franklin, Francis Gardner, Peterson Goodwin, Isaiah L. Green, John Heister, William Helms, David Holmes, Benjamin Howard, Daniel Ilsley, Richard M. Johnson, Walter Jones, Thomas Kenan, Nehemiah Knight, John Lambert, John Love, Robert Marion, William McCreery, John Montgomery, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, John Morrow, Gurdon S. Mumford, Roger Nelson, Thomas Newbold, Thomas Newton, Wilson C. Nicholas, John Porter, John Pugh, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Matthias Richards, Samuel Riker, Lemuel Sawyer, Ebenezer Seaver, James Sloan, John Smilie, Jedediah K. Smith, Henry Southard, Clement Storer, Peter Swart, John Taylor, David Thomas, Abram Trigg, George M. Troup, James I. Van Allen, Philip Van Cortlandt, Jesse Wharton, Robert Whitehill, Isaac Wilbour, Marmaduke Williams, Alexander Wilson, Richard Winn, and James Witherell.

NAYS—Evan Alexander, William W. Bibb, William Blackledge, John Campbell, Epaphroditus Champion, Martin Chittenden, Howell Cobb, John Culpepper, Samuel W. Dana, John Davenport, jr., James Elliot, William Ely, Barent Gardenier, James M. Garnett, Charles Goldsborough, Edwin Gray, John Harris, William Hoge, James Holland, Robert Jenkins, James Kelly, Philip B. Key, William Kirkpatrick, Joseph Lewis, jr., Edward St. Loe Livermore, Matthew Lyon, Josiah Masters, William Milnor, Jonathan O. Mosely, Timothy Pitkin, jr., Josiah Quincy, John Randolph, John Rowan, John Russell, Dennis Smelt, Samuel Smith, Richard Stanford, William Stedman, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, Jabez Upham, Archibald Van Horn, and Killian K. Van Rensselaer.

Ordered, That the Clerk of this House do carry the said bill, as amended, to the Senate, and desire their concurrence.

The bill is as follows:

An Act laying an embargo on all ships and vessels in the ports and harbors of the United States.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That an embargo be and hereby is laid on all ships and vessels in the ports and places within the limits or jurisdiction of the United States, cleared or not cleared, bound to any foreign port or place; and that no clearance be furnished to any ship or vessel bound to such foreign port or place, except vessels under the immediate direction of the President of the United States; and that the President be authorized to give such instructions to the officers of the revenue, and of the navy and revenue cutters of the United States, as shall appear best adapted for carrying the same into full effect: *Provided*, That nothing herein contained shall be construed to prevent the departure of any foreign ship or vessel, either in ballast, or with the goods, wares, and merchandise, on board of such foreign ship or vessel, when notified of this act.

SEC. 2. *And be it further enacted*, That during the continuance of this act, no registered or sea-letter vessel, having on board goods, wares, and merchandise,

shall be allowed to depart from one port of the United States to another within the same, unless the master, owner, consignee, or factor of such vessel shall first give bond with one or more sureties to the collector of the district from which she is bound to depart, in a sum of double the value of the vessel and cargo; that the said goods, wares, and merchandise, shall be relanded in some port of the United States, dangers of the seas excepted; which bond, and also a certificate from the collector where the same may be relanded, shall, by the collectors respectively, be transmitted to the Secretary of the Treasury. All armed vessels possessing public commissions from any foreign Power are not to be considered as liable to the embargo laid by this act.

TUESDAY, December 22.

Mr. COOK, from the committee appointed on the twelfth ultimo, presented a bill making provision for extinguishing the debts due from the United States; which was read twice and committed to a Committee of the Whole on Monday next.

Mr. THOMAS, from the committee appointed on the twenty-third ultimo, to whom were referred the letters and reports from the Commissioners under the act for the relief of the refugees from the British Provinces of Canada and Nova Scotia, which were laid before this House on the 13th of February, 1806, made a report thereon; which was read, and referred to a Committee of the Whole to-morrow.

Mr. THOMAS, from the same committee, also reported a bill supplementary to the act, entitled "An act regulating the grants of land appropriated for the refugees from the British Provinces of Canada and Nova Scotia; which was read twice and committed to a Committee of the Whole last appointed.

Mr. ALSTON said the Committee of Revisal and Unfinished Business had some days ago made a report of bills the term of duration which would expire in a certain time. Amongst others, Mr. A. said the House would perceive that the law passed in 1804, for establishing the salaries of the officers of the United States, would expire on the first day of January. The Secretary of the Treasury, it would be found, in making up his estimates for the ensuing year, had predicated that part relating to salaries on the supposition that the salaries would be fixed at the same rates as they were formerly. It was proper that this subject should be now considered; and with that view Mr. A. submitted an order directing the Committee of Ways and Means to inquire into the subject and report by bill; which was agreed to.

TELEGRAPHS.

Mr. CROWNINSHIELD said it would be acknowledged by all that the prompt communication of information along the coast, to different parts of the country, would be extremely advantageous at any time; perhaps it was more proper to be considered at this moment than at any time since the conclusion of the Treaty of Peace which established our Independence. It was true that the United States had a mail running from each extreme of the continent to the other; but information could not, through the medium of the mail, be conveyed with the expedition which a telegraph would afford to important intelligence. This had been acknowledged by almost all Governments; and in France, Spain, and England, they had been found of great utility. There had been a telegraph in this country, from the Vineyard to Boston, a distance of about seventy miles; and communications could be made by it between those places in one hour. Calculating from this fact, information might be communicated from Norfolk to the Seat of Government in two hours, and from Washington to New York or Boston in three or four hours. To bring this subject before the House he should offer the following resolution:

Resolved, That it is expedient to authorize the President of the United States to establish such telegraphs, along the coasts and in other situations in the United States as he may deem proper.

Mr. C. said as this was a subject which might require some discussion, being so little known, he should not now press its decision, but moved that the resolution be referred to a Committee of the Whole to-morrow.

After some conversation on the propriety of a reference to a Committee of the Whole in preference to a select committee, the reference proposed by the mover of the resolution was agreed to—yeas 53, nays 34.

DEFENCE OF PORTS AND HARBORS.

On motion of Mr. BLOUNT, the House took up for consideration the report of the Committee of the Whole on the bill for erecting fortifications. The amendment inserting the sum of one million of dollars in the bill as the sum to be allotted for that object, being yet under consideration,

Mr. MASTERS said he would barely state a few facts introductory to a motion which he proposed to make before he sat down, although they might clash with the opinion of the Secretary of War. When measures similar to this were under consideration, during the last session, the Secretary of War reported a sum of $20,000 for the purpose of repairing fortifications, for which purpose, however, $150,000 was finally appropriated. Gentlemen who at that time opposed the increase in the bill, in the course of their reasoning relied on the opinion of the Secretary of War, contended that it was all he asked for, and that he must be the best judge of what was necessary. The Secretary had this year proposed a larger sum; and against an increase of that sum the same arguments were now used as were last year, that it was the opinion of the Secretary of War. Mr. M. had no wish to detract from the merits of that gentleman; he believed he was a good old man and a good patriot, but he could wish that he was twenty years younger.

The sum of one million of dollars taken abstractedly was a respectable sum; but when it was considered that it was to be applied to so many places it was a frivolous and trifling appropriation.

Mr. M. said it would be admitted that the cities of New York and New Orleans were two of the

most important places in the Union, and the most vulnerable points. New Orleans was the only market for the produce of the whole western country, and the security of that place constituted the security of millions of acres of uncultivated land, which would be millions of wealth to the nation. It was a well known fact, ever since the acquisition of that country by the United States, that the pride of the Spaniards had been touched, and where their pride was concerned, the Spaniards were a tenacious and persevering people. Our citizens in that part of the country, said Mr. M., have smelt war for two years; if he might be allowed that expression. His idea was, that that place ought to be fortified, with formidable forts and batteries, and well garrisoned with troops, in order to be able to repel an attack from the Spaniards or any other Power. The sum assigned by the Secretary at War, for that place, was $60,000. With that sum it was contemplated to erect a fort about twenty miles below New Orleans, a battery on the margin of Lake Pontchartrain, and repair forts St. Lewis and St. Charles, with other works, barracks, magazines, and other improvements, at or about New Orleans. Was it not most reasonable to suppose that four times that sum would be little enough for those purposes? Yet gentlemen say they rely solely on the opinion of the Secretary at War. Mr. M. said he relied on the conviction of his own senses.

Forts Greene, Moultrie, Pinckney, Johnson, and other works in South Carolina and Georgia, were almost entirely demolished, and required large appropriations. The Secretary at War reports, that it is necessary to erect a battery and block house in Delaware Bay, a battery and block house at Egg Harbor, a battery and two block houses at Amboy, three batteries and block houses on Long Island. For all these works, and including the port and harbor of New York, there is assigned only the sum of two hundred and eleven thousand dollars. He asked if there was a member on that floor who could suppose that sum adequate for the city of New York and those other places. The gentlemen who oppose the increase of appropriations, must go on the principle of sinking blocks in the channel of the harbor of New York. He admitted that to be the cheapest mode of defence, but said it depended on the concurrence of the Legislature of that State. He presumed they would not concur; if they did they sealed eternal destruction to that State. He said the truth was, they wanted eight hundred thousand at least for New York. He adverted to several other ports of the United States to show the inadequacy to the object, of the sum destined for fortifications.

Mr. M. said, the object, as related to Great Britain, was to obtain complete satisfaction for the injuries and insults done this nation, and unless peace took place between the contending Powers of Europe, they would in the end have war. It was apparent those Powers were determined to trample under foot the law of nations, and annihilate every vestige of neutrality. The necessity, therefore, of strong measures and large appropriations arose out of the situation of things in Europe. For several successive years our property had been plundered; no redress obtained, no defensive measures adopted. The desire for peace and neutrality had satisfied the Government with complaining and negotiating. He was rejoiced to see a disposition in the House no longer to sit still, helpless and inactive; since the secret, dark, solemn, and midnight vote, his hopes for peace with Great Britain were very much diminished. [Mr. M. was here called to order.] Should they, he said, obtain reparation from that nation, and the adjustment of all their differences, and be able to patch up an accommodation for the present, they would have to look for war with France and Spain on the back of it. He said he was for peace, but for an honorable peace. Their defenceless and unprepared situation required large means. He hoped the House would not deceive themselves in the present unsettled state of affairs. It would be treachery to the nation not to appropriate a liberal sum for defence. Let us, said he, stand forth boldly and do our duty to the nation in this calamitous crisis. Our preparation during the profoundest peace should be respectable; when there was danger of war, it should be formidable. Our attention to the great and acknowledged objects of national defence in a time of peace is the best preventive, and often averts the calamities of war; in times of danger it is necessary to the defence of the country and to the maintenance of independence. We have not sufficiently directed the resources of the nation to these great and essential objects. The question is no less than the defence of our common country. It is not the security of foreign commerce or foreign aggrandizement. We are contending for the safety and existence of the nation. If we are attacked, the honor and being of the nation require us to defend, and, in order to defend with effect, we must be prepared. If we do not attend to this point of policy, we mistake our real interest and duty. The difficulty of the crisis demands more than common vigor and a larger appropriation than is contained in the bill. Mr. M. concluded by moving that the bill be recommitted to the Committee of the whole House, for the purpose of striking out the sum of one million of dollars, and inserting the sum of fifteen hundred thousand dollars.

Mr. WITHERELL said he was not opposed to this motion, if any gentlemen could show that since the last debate on the subject, any new reason had arisen to justify an increase of the sum.

Mr. MACON said he should vote for recommitment on general principles, but not for the purpose of inserting any specific sum, as was directly expressed by the motion.

Mr. BLOUNT hoped the motion would not prevail. It gave him, however, some satisfaction to find that this subject was not totally abandoned; for the language which had lately been used on that floor would have led him to suppose that there was no necessity for fortification at all. [Mr. B. was here called to order by the SPEAKER, for making allusion to what had taken place with

closed doors.] Mr. B. said he had not mentioned any particular time on which this had been said, and therefore had not transgressed the rules of order. The gentleman who made this motion must be convinced he could not get a larger sum than one million of dollars; a recommitment therefore would only produce an useless delay.

After some conversation, at the request of the SPEAKER, Mr. MASTERS reduced his motion to writing to this effect:

"*Ordered*, That the bill for fortification, &c. be recommitted to a Committee of the Whole, for the purpose of striking out the sum of one million, and inserting $1,500,000."

Mr. STANFORD moved to amend the motion by striking out "$1,500,000" and inserting "$500,000."

The SPEAKER declared the amendment to be a substitute for the original motion, and that it could not be received.

The question was then taken on the motion of Mr. MASTERS, by yeas and nays; yeas 35, nays 79, as follows:

YEAS—John Blake, jr., John Campbell, Martin Chittenden, Orchard Cook, Samuel W. Dana, Daniel M. Durell, James Elliot, William Ely, Barent Gardenier, Francis Gardner, John Harris, William Helms, Benjamin Howard, Reuben Humphreys, William Kirkpatrick, Josiah Masters, William Milnor, Gurdon S. Mumford, Timothy Pitkin, jr., Josiah Quincy, John Rowan, John Russel, William Stedman, Clement Storer, Lewis B. Sturges, Peter Swart, Benjamin Tallmadge, John Taylor, David Thomas, John Thompson, Jabez Upham, James J. Van Allen, Philip Van Cortlandt, Killian K. Van Rensselaer, and Isaac Wilbour.

NAYS—Lemuel J. Alston, Willis Alston, jr., Ezekiel Bacon, Joseph Barker, Burwell Bassett, William Blackledge, Thomas Blount, John Boyle, Robert Brown, William Butler, Joseph Calhoun, George W. Campbell, Peter Carlton, Epaphroditus Champion, John Chandler, Matthew Clay, John Clopton, Howell Cobb, Jacob Crowninshield, John Culpepper, Richard Cutts, John Dawson, Josiah Deane, Joseph Desha, William Findley, James Fisk, Meshack Franklin, Peterson Goodwyn, Edwin Gray, Isaiah L. Green, John Heister, William Hoge, James Holland, David Holmes, Daniel Ilsley, Richard M. Johnson, James Kelly, Thomas Kenan, Philip B. Key, Nehemiah Knight, John Lambert, John Love, Nathanial Macon, Robert Marion, William McCreery, John Montgomery, Nicholas R. Moore, Jeremiah Morrow, John Nelson, Thomas Newbold, Thomas Newton, Wilson C. Nicholas, John Porter, John Pugh, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Matthias Richards, Samuel Riker, Lemuel Sawyer, Ebenezer Seaver, James Sloan, Dennis Smelt, John Smilie, Jedediah K. Smith, Samuel Smith, John Smith, Henry Southard, Richard Stanford, George M. Troup, Archibald Van Horne, Jesse Wharton, Robert Whitehill, Marmaduke Williams, Alexander Wilson, Richard Winn, James Witherell.

The question then being on concurrence with the sum of one million, reported by the Committee of the Whole—

Mr. COOK spoke generally on the subject of fortifications, at considerable length, in which he protested against receiving the dicta of any officers of Government as to what sums they were to appropriate, or what measures to adopt, at the same time that he professed the highest personal respect for those officers, as well as for the Committee of Aggressions who reported the bill under consideration; the members composing which, though very respectable gentlemen and some of them military characters, were generally from the interior of the country, and could not be supposed capable of judging of measures proper to be adopted for the defence of the seacoast. He protested against the report of the committee, and general course of procedure, because the House were not told how many bastions, &c. or what description of fortifications were to be erected at the respective places; that the harbor near which he lived had sufficient depth of water to admit the largest ship in the English navy, and had not been estimated as requiring a defence, anything near equal to what would be necessary; and lastly he protested in his own name and that of his constituents against the sum reported by the Committee of the Whole, as totally inadequate to answer its professed object.

Mr. SLOAN replied to Mr. COOK, in a humorous strain, showing that although he agreed with the gentleman in almost everything he had said, taken abstractly, he differed with him totally as to the conclusion he had drawn from his positions.

The bill was then ordered to a third reading.

To-morrow was named as the day for its third reading, but negatived—ayes 29.

To-day being named, was agreed to without a division.

EMBARGO BILL.

In secret session—on motion of Mr. ROWAN, that the House do come to the following resolution:

Resolved, That the injunction of secrecy attached to the passage of a bill imposing or laying an embargo on the vessels within our ports and harbors, be taken off, and that the secret journal relative to that subject be published:

A division of the question on the said motion was called for by Mr. BIBB; and, on the question that the House do agree to the first member of the said resolution, contained in the words following, to wit:

Resolved, That the injunction of secrecy attached to the passage of a bill imposing or laying an embargo on the vessels within our ports and harbors, be taken off:

It was resolved in the affirmative.

The question was then taken that the House do agree to the second member of the said resolution, contained in the words following, to wit: "And that the secret journal relative to that subject be published:"

And resolved in the affirmative.

WEDNESDAY, December 23.

Mr. BASSETT, from the committee to whom was referred on the eighteenth instant, the petition of the Vestry of the Protestant Episcopal Church, in the town of Alexandria, in the District of Columbia, reported a bill to incorporate the Protestant Episcopal Church of the town of Alexandria;

which was read twice and committed to a Committee of the Whole on Monday next.

Mr. G. W. CAMPBELL, from the Committee of Ways and Means, reported a bill making appropriations for the support of Government, during the year one thousand eight hundred and eight; which was read twice and committed to a Committee of the Whole on Friday next.

Mr. GRAY, from the committee appointed on the twentieth ultimo, presented a bill for amending the ordinance for the Government of the Northwestern Territory, passed the thirtieth of July, one thousand seven hundred and eighty-seven; which was read twice and committed to a Committee of the Whole on Monday next.

RELIEF OF DEBTORS.

Mr. PORTER said, that, as the act for the relief of debtors now stood, a debtor must at all events submit to imprisonment at least thirty days before he could be relieved, and then the discharge was only against the particular debt for which he was confined, although there might be other actions against him, for each of which he was liable to the same length of confinement as in the first instance. It appeared to Mr. P., that this law bore hard on the honest but unfortunate debtor. He had long been of opinion that it was unjust and impolitic to confine a debtor in jail who had evinced the strongest desire to comply with the obligations of justice, by surrendering up the whole of his property. If some provision could be devised which would guard the rights of creditor, and at the same time save a debtor, who acted with integrity towards his creditors, from a confinement in the common jail, where his energies might be paralyzed, his morals perhaps injured, his character depreciated, and which might prevent him from hereafter becoming useful to himself, family, or country; it would indisputably be worthy an enlightened Legislature. He then moved the following resolution, which was agreed to:

Resolved, That a committee be appointed to inquire whether any, and if any, what alterations are necessary in the act for the relief of persons imprisoned for debt, passed the 6th day of January, 1800; with leave to report by bill or otherwise.

Ordered, That Mr. PORTER, Mr. MUMFORD, Mr. CROWNINSHIELD, Mr. MOSELY, and Mr. SLOAN, be appointed a committee, pursuant to the said resolution.

PETER LANDAIS.

Mr. HOLMES, from the committee to whom was referred the memorial of Peter Landais, made the following report:

The memorialist commanded, in the Revolutionary war, the Alliance, a frigate belonging to the United States. In the year 1779, whilst cruising in the North seas, he captured three British vessels, and sent them into Bergen, in Norway. On their arrival at that port they were seized by order of the Danish Government, and delivered to the British Consul, at his request, on the ground that the Government of Denmark had not acknowledged the independence of the United States, and therefore deemed the capture illegal. The memorialist asks to be indemnified by the United States for his share of said prizes. Previous to the sailing of the Alliance on the cruise aforesaid, it appears that the memorialist entered into a joint agreement with John Paul Jones and other commanders of American and French armed vessels, to cruise in concert against the British, which agreement regulates the distribution of prize money, and declares that the squadron is to obey the orders given by the Minister of the French Marine and the Minister Plenipotentiary of the United States at the Court of France; (a copy of the same is herewith presented.) Upon a representation of the conduct of the Danish Government in this affair to Dr. Franklin, he applied to that Government for redress. His letter to Count Bomstorf, and the answer thereto, will be found among the annexed documents. At a subsequent period, the claim was renewed on the part of the United States, and the Chevalier J. Paul Jones appointed their agent, in subordination to our Minister at Paris, Mr. Jefferson. The agent repaired, conformably to instructions, to Copenhagen. Nothing, however, appears to have been finally done in the business. The memorialist claims his share of the three prizes, in exclusion of the commanders mentioned in the agreement above alluded to. Though your committee differ with him in this construction of the instrument, they do not consider the decision of the point material at present, as it can only relate to the amount of the claim, and not to any principle involved in the consideration of it. From the circumstance of the crew of the Alliance having mutinied on their return to the United States, and thereby forfeited any claim to prize money, it is evident that the Government of the United States are materially interested in obtaining from Denmark an ample indemnity for the restoration of the prizes. The claim, therefore, of the memorialist is identified with that of the Government, and forms a proper subject for negotiation. If, by any arrangement between the two Governments, the United States should receive any compensation for the injury sustained, then the claim of the memorialist to his legal proportion of the prizes must be considered valid. But until then he certainly cannot of right demand that the Government shall remunerate him for a misfortune which it was no way instrumental in bringing about, but, on the other hand, its wish and interest to avert. The Government of the United States never have recognised the principle of insuring the property of their citizens, in any situation, or under any circumstances against misfortune, accident, or the conduct of foreign nations. In the latter case, it is their duty to use all means in their power consistent with the general good and sound policy, to procure justice to the injured citizen; but nothing more can be expected. In this particular instance, there is less reason to compensate the individual sufferers than there would be in many others that might present themselves to our consideration; for it will be observed that the prizes could not have been sold in any port of Denmark, and their safe arrival at a port where they could have been disposed of was at that time very problematical, as may be seen from the communication of Dr. Franklin to the President of Congress on the subject. Upon a view of the whole of the circumstances of the case, your committee concur in opinion with the several committees who have reported upon this claim, and whose reports have been heretofore agreed to by the House. They, therefore, submit the following resolution:

Resolved, That Peter Landais have leave to with-

draw his memorial, and the papers accompanying the same.

The report was laid on the table.

MARYLAND CONTESTED ELECTION.

On motion of Mr. FINDLEY, the House went into a Committee of the Whole on the report of the Committee of Elections, to whom was re-committed the report on the petition of Joshua Barney; and the resolution, including the report, being under consideration as follows:

Resolved, That William McCreery having the greatest number of votes and being duly qualified, agreeably to the Constitution of the United States, is entitled to his seat in this House.

Messrs. FINDLEY and STURGES supported the report, and confirmed the statement, of facts and procedure before the committee, as detailed in the former debate on the subject.

Mr. LOVE moved to strike out of the resolution the words "agreeably to the Constitution of the United States."

Mr. GOLDSBOROUGH suggested the propriety of Mr. LOVE's withdrawing his motion, and renewing it in the whole House, when the votes on the question could be recorded.

Mr. LOVE declined withdrawing his amendment.

Mr. KEY objected to the motion, because the House would, by agreeing to such an amendment, express an opinion that a member could be entitled to his seat, without being duly qualified; which was absurd.

Mr. LOVE defended his motion, and declared his wish to be, to avoid a decision on the rights of States.

Messrs. ALSTON, G. W. CAMPBELL, and UPHAM, opposed the motion.

Mr. SMILIE said there was no member in the House but believed that Mr. McCreery was qualified by the law of the United States; and he could not conceive the object of the motion.

Mr. MACON should prefer voting on the resolution in the original general form in which the committee had placed it in their first report.

Mr. NELSON declared his firm belief that William McCreery was not entitled to his seat; that the resolution as reported, was insidious, though he believed it was not intended or perceived by the committee, as it went to prostrate the law of Maryland; he believed the State had a right to fix qualifications for its Representatives, and would contend for that right as long as he lived. If the law of Maryland was Constitutional, William McCreery was not entitled to his seat; if it was unconstitutional, he was duly elected. Gentlemen might evade the question in any way, but it should be taken in such a manner as fairly and honestly to show the grounds on which they voted; he always wished to register his vote in such a way that his constituents might understand clearly the reasons which actuated him.

Mr. MARION moved to amend the amendment proposed to the resolution, by striking out other words, so that the resolution should read thus: "*Resolved*, That William McCreery is entitled to his seat in the House"—and thereby avoid a decision on the constitutionality of a State law.

Mr. RHEA advocated the amendment last proposed, from a wish to avoid a decision on State laws.

Mr. CLOPTON advocated the amendment and discussed the general principles of the Constitutional question, in a highly argumentative speech of considerable length. He very strongly supported the right of the States to annex qualifications, and pointed out the evils to be feared from a contrary decision, which would be implicated by the resolution as reported.

He was followed by Mr. SLOAN, on the same side of the question.

Messrs. FINDLEY and STURGES opposed; and Messrs. GOLDSBOROUGH, G. W. CAMPBELL, and UPHAM, supported the amendment last offered.

The question being taken on the amendment, was carried—yeas 73.

The question was then taken on the resolution as amended, and carried—yeas 83.

The Committee then rose and reported the resolution as amended.

On the question of concurrence with the amendment reported by the Committee of the Whole, Messrs. KELLY and SMILIE opposed, and Messrs. MARION and TAYLOR supported it.

The question was then taken on the amendment, and it was agreed to by the House—yeas 70, nays 37, as follows.

YEAS—Lemuel J. Alston, Burwell Bassett, William W. Bibb, William Blackledge, John Blake jr., John Boyle, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, George W. Campbell, John Clopton, Orchard Cook, John Culpepper, Samuel W. Dana, John Davenport, jr., John Dawson, James Elliot, William Ely, Meshack Franklin, Barent Gardenier, Charles Goldsborough, Peterson Goodwyn, Isaiah L. Green, John Harris, John Heister, William Helms, William Hoge, James Holland, David Holmes, Thos. Kenan, William Kirkpatrick, John Love, Nathaniel Macon, Robert Marion, John Montgomery, Nicholas R. Moore, Jeremiah Morrow, John Morrow, Gurdon S. Mumford, Roger Nelson, Thomas Newton, Wilson C. Nicholas, John Pugh, John Rea of Pennsylvania, John Rhea of Tennessee, Matthias Richards, Samuel Riker, John Russell, Lemuel Sawyer, Ebenezer Seaver, James Sloan, Dennis Smelt, Samuel Smith, Richard Stanford, Clement Storer, Peter Swart, John Taylor, John Thompson, George M. Troup, Jabez Upham, James I. Van Allen, Archibald Van Horne, Jesse Wharton, Robert Whitehill, Isaac Wilbour, Marmaduke Williams, Alexander Winn, and James Witherell.

NAYS—Willis Alston, jr., Ezekiel Bacon, Joseph Barker, Thomas Blount, Peter Carlton, Epaphroditus Champion, John Chandler, Martin Chittenden, Matthew Clay, Howell Cobb, Jacob Crowninshield, Josiah Deane, Daniel M. Durell, William Findley, Francis Gardner, James M. Garnett, Edwin Gray, Daniel Ilsley, James Kelly, John Lambert, Joseph Lewis, jr., Edward St. Loe Livermore, Josiah Masters, William Milnor, Jonathan O. Mosely, Timothy Pitkin, jr., Josiah Quincy, John Randolph, John Rowan, John Smilie, Jedediah K. Smith, William Stedman, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, Abram Trigg, and Killian K. Van Rensselaer.

Mr. RANDOLPH moved to amend the resolution, so as to read,

"*Resolved*, That William McCreery, not being qualified according to the law of Maryland, is not entitled to his seat in this House."

The SPEAKER declared the amendment to be a substitute to the resolution and therefore not in order.

Mr. RANDOLPH said he wished to bring the question of the constitutionality of the law of Maryland before the House, and therefore was constrained to move an amendment against which he should vote himself: he then moved to insert "being duly qualified by the law of Maryland, is entitled, &c."

The SPEAKER conceived that the House had already determined that the word qualified should not be contained in the resolution.

Mr. RANDOLPH then moved it in another form: "having the qualifications prescribed by the law of Maryland is entitled, &c."

The motion being admitted in this form,

Messrs. KEY and RHEA opposed the amendment.

Mr. MONTGOMERY warmly opposed the amendment; said he should never give his consent to any proposition by which the House should be compelled to give a decision on the constitutionality of a State law—should never consent that the House should be erected into a tribunal for that purpose.

The House adjourned without coming to any decision on the amendment.

THURSDAY, December 24.

Mr. RANDOLPH presented a memorial of Joseph Ward, a holder of certain bills of credit, emitted by the State of Rhode Island, pursuant to a resolution of Congress, under the former Government, dated the eighteenth of March, one thousand seven hundred and eighty, praying that he may receive the interest, together with the amount of the principal, due on the said bills, agreeably to the contract entered into on the part of the United States.—Referred to the Secretary of the Treasury, with instruction to examine the same, and report his opinion thereupon to the House.

Mr. G. W. CAMPBELL, from the Committee of Ways and Means, reported a bill to continue in force, for a limited time, an act, entitled "An act continuing, for a limited time, the salaries of the officers of Government therein mentioned;" which was read twice and committed to a Committee of the Whole on Monday next.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act supplementary to an act, entitled 'An act fixing the Military Peace Establishment of the United States;" to which they desire the concurrence of this House.

The said bill was read twice and committed to a Committee of the Whole on Monday next.

The House resolved itself into a Committee of the Whole on the bill to extend certain privileges, as therein mentioned, to Anthony Boucherie; and, after some time spent therein, the Committee rose and had leave to sit again.

MARYLAND CONTESTED ELECTION.

On motion of Mr. FINDLEY the House took up for consideration the report of the Committee of Elections on the contested election of Joshua Barney.

Mr. RANDOLPH'S motion of yesterday to insert "having the qualifications prescribed by the law of Maryland" being yet under consideration.

Mr. M. CLAY observed that, being a member of the committee who made the report, and that committee having been attacked both within and without the walls of the House, he was called upon by the committee, who had a meeting on the subject, to rise and state the truth as respected the proceedings of that committee. About the 9th of November, the committee had made a report on this subject, "that William McCreery is entitled to his seat in this House." Not satisfied with this report, the House had sent it back for a more particular statement, on the suggestion of a gentleman from North Carolina, that the committee had not done justice to the petitioner; that they had not made a fair statement of facts as presented to them. On this subject a great discussion had taken place; it had received more consideration and more deliberation than any subject of the kind that ever came before the House. About the time that this report was recommitted, it was attacked, not only in the House, but also in a newspaper printed at Baltimore, under the title of "The Whig." After having stated the report of the committee, that paper concluded by saying that a particular fact was not admitted by Mr. Barney. Now, with respect to that report of the committee, the truth was, that the facts were taken down by the chairman of the committee, the parties being present. When it was stated to them, they could not directly agree; but after some time, several days, the report was made out and read to them. They seemed to agree, except in one point. Mr. McCreery contended that he had been in town ten days previous to the election, and Mr. Barney would admit but five or six days. They at last, however, agreed that it should be stated at five or six. The report was, at this time, read over to them several different times, and the parties did consent to the statement of facts. Five or six members of the committee were then present, who bear testimony to this statement. At the time the member from North Carolina attacked the report, a member from South Carolina (Mr. D. R. WILLIAMS) rose, and stated the facts as Mr. C. had now stated them. The House, however, not contented with this statement, and wishing a more perfect report, sent it back to the same committee, who gave the parties time to procure further proof in the case. When they returned from Baltimore, they brought with them such evidence as they could collect, which was reported by the committee, and is now before the House. He should not now have risen, had not the report been attacked by that newspaper, and had not an honorable gentleman, whom

he respected and esteemed as much as he did any member in the House, (Mr. NELSON.) declared yesterday that the last report was insidious. This was a heavy charge on the committee. Had that gentleman, or any other, stated wherein that report did not comport with the evidence? He had not, he could not. Members did not voluntarily form committees. They were compelled to do it by order of the House. It was the duty of the Committee of Elections to collate evidence, and to state to the House such facts as might come before them, with their opinion thereupon. This was already done; and it must hurt the feelings of that committee to be "insidiously" attacked without and openly within. That paper, which derived some eminence from assuming the title of "The Whig," had also attacked the last report as "insidious." Mr. C. thought it very unfair that the House or committee should be attacked while deliberating on a particular subject. After the subject was decided, it was fair game. That paper, or any other, had a right to discuss public characters or public measures. It was also very unfair, Mr. C. said, that gentlemen could not step out of doors without being jostled on the way, and having opinions obtruded on them by persons certainly not more entitled to respect than members of the House. The editor of that paper was possibly not to blame. He might be an honest man. Possibly these indecorous paragraphs may have been written by some member of the association, which, it seemed, supported the paper. Mr. C. did not charge any gentleman within or without, but possibly there might be some sly, skulking member of this society lurking about these walls, and sending these defamatory paragraphs to the editor. By his observations, Mr. C. did not mean to attack the liberty of the press. He thought that and a liberal education the two main pillars of the great republican fabric. When speaking of the liberty of the press, he meant the fair reporter of facts, which spread from one end of the continent to the other, to inform the people of the measures adopted by their representatives, and the reasons and motives on which they were grounded.

Mr. C. said he had taken a view of the proceedings, and what was the result? That the report of the Committee of the Whole of yesterday produced the resolution in the same form precisely as that reported by the Committee of Elections. The evidence last before the committee established the same facts that were originally admitted by the parties themselves. After the gentlemen had the subject more than a month before them, twisted and turned it, altered and amended it, sent it out of the House and brought it back, they had now reduced the decision to precisely the same words as at first.

Mr. C. concluded by explaining his reasons for the vote he should give. He respected the State sovereignties as much as any man; thought them the great sheet-anchor of republican Government; but if they clashed with the Federal Government, he should err on the safe side of his oath, and support the Constitution of the United States.

Mr. NELSON justified the observations he made, but totally disclaimed any intention of reflecting on the members of the committee, either in their aggregate or individual capacity. If any difference had occurred between the committee and "The Whig," let them settle it. He had nothing to say. But if Mr. N. was disposed to rise in his place, and repel every improper attack made upon him in the newspapers, he would have enough to do.

Mr. BLOUNT said it was true he had made a motion to recommit a former report of the Committee of Elections; but, in doing that, he had not the slightest idea of impeaching the motives of that committee. He had then stated that he had heard Commodore Barney that morning complaining to other members of the House that the committee had stated certain facts which he had not admitted. But when the gentleman from South Carolina explained, he had been content, and had not said another word.

Mr. GOLDSBOROUGH said this amendment was a legislative manœuvre to embarrass the decision; at the same time he did not impeach the motives of the gentleman who made it.

Mr. RANDOLPH defended the introduction of the amendment. He thought the only principle on which the decision of the case could turn, should not be taken out to satisfy the scruples of gentlemen who found themselves in a dilemma. He did believe that William McCreery was not qualified, by the laws of Maryland, and, therefore, not entitled to his seat; and so he should vote.

Mr. ROWAN moved to amend the amendment by striking out the words "the laws of Maryland," and inserting "law." He thought the Constitution the supreme law of the land.

This amendment was declared to be a substitute, and therefore not in order.

Mr. ROWAN then moved for a division of the question, taking it first on the first clause of the amendment.

The SPEAKER declared it could not be divided without changing its object.

Mr. ELY declared that he should not consider himself as being committed on the principle of voting against the amendment, but should vote against it, because he was perfectly satisfied with the present form of the resolution.

Mr. ROWAN moved to recommit the report or resolution to a Committee of the Whole House, to ascertain the principle on which the decision should be founded.

Mr. LOVE opposed the motion for recommitment, as it would be a great waste of time.

Mr. KEY was opposed to the amendment and its introduction at this time, because a returned member was entitled to the sense of the House in the broadest manner, and without circumlocution. He also opposed the motion for recommitment.

The motion for recommitment was negatived, and the question on the amendment recurring—

Mr. BLACKLEDGE said the Constitution of the United States being adopted by the State of Maryland, had as much become a law of the State as any State law. If the amendment were so amended as to confine it to any particular State

aw, he should certainly vote against it; otherwise, he should vote in favor of it.

Mr. GARDNER found himself considerably perplexed. In voting for this amendment, they would vote Mr. McCreery elected on a different principle from that on which he should vote in his favor. In voting against it, they might vote him out of his seat.

The question was then taken on the amendment to add the words "having the qualifications required by the law of Maryland," and decided in the negative—yeas 8, nays 92, as follows:

YEAS—Joseph Barker, William W. Bibb, William Blackledge, William A. Burwell, William Butler, Joseph Calhoun, Lemuel Sawyer, and James Sloan.

NAYS—Willis Alston, jun., Ezekiel Bacon, David Bard, Burwell Bassett, John Blake jr., Thomas Blount, John Boyle, John Campbell, Peter Carlton, Epaphroditus Champion, John Chandler, Martin Chittenden, Matthew Clay, John Clopton, Orchard Cook, Jacob Crowninshield, John Culpepper, Richard Cutts, Samuel W. Dana, John Davenport, jun., Joseph Desha, Daniel M. Durell, James Elliot, William Ely, John W. Eppes, William Findley, Barent Gardenier, Charles Goldsborough, Peterson Goodwyn, Isaiah L. Green, John Harris, John Heister, William Helms William Hoge, James Holland, David Holmes, Benjamin Howard, Daniel Ilsley, Walter Jones, James Kelly, Thomas Kenan, William Kirkpatrick, Nehemiah Knight, John Lambert, John Love, Matthew Lyon, Nathaniel Macon, Robert Marion, Josiah Masters, William Milnor, John Montgomery, Nicholas R. Moore, Thomas Moore, John Morrow, Jonathan O. Mosely, Roger Nelson, Thomas Newbold, Thomas Newton, Wilson C. Nicholas, Timothy Pitkin, jun., John Porter, John Pugh, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Matthias Richards, John Rowan, John Russell, Ebenezer Seaver, John Smilie, Jedediah K. Smith, Samuel Smith, Richard Stanford, William Stedman, Clement Storer, Lewis B. Sturges, Peter Swart, Samuel Taggart, John Taylor, David Thomas, John Thompson, Jabez Upham, James I. Van Allen, Archibald Van Horne, Killian K. Van Rensselaer, Jesse Wharton, Robert Whitehill, Isaac Wilbour, Marmaduke Williams, Alexander Wilson, Richard Winn, and James Witherell.

Mr. BARKER advocated the right of States to superadd qualifications, of which he had not, till this discussion took place, conceived that there could be a doubt.

The final question was then taken, in the following words: "*Resolved*, That William McCreery is entitled to his seat in this House;" and it passed in the affirmative—yeas 89, nays 18, as follows:

YEAS—Willis Alston, jun., Ezekiel Bacon, William W. Bibb, William Blackledge, John Boyle, William A. Burwell, William Butler, Joseph Calhoun, George W. Campbell, John Campbell, Peter Carlton, Epaphroditus Champion, Martin Chittenden, Matthew Clay, Orchard Cook, Jacob Crowninshield, John Culpepper, Richard Cutts, Samuel W. Dana, John Davenport, jun., Joseph Desha, James Elliot, William Ely, John W. Eppes, William Findley, Barent Gardenier, Francis Gardner, Charles Goldsborough, Peterson Goodwyn, Isaiah L. Green, John Harris, John Heister, William Helms, David Holmes, Benjamin Howard, Reuben Humphreys, Richard M. Johnson, Walter Jones, James Kelly, Thomas Kenan, William Kirkpatrick, Nehemiah Knight, John Lambert, Joseph Lewis, junior, Edward St. Loe Livermore, John Love, Matthew Lyon, Nathaniel Macon, Josiah Masters, William Milnor, John Montgomery, Nicholas R. Moore, Thomas Moore, John Morrow, Jonathan O. Mosely, Gurdon S. Mumford, Thomas Newton, Wilson C. Nicholas, Timothy Pitkin, jun., John Porter, John Pugh, John Rea of Pennsylvania, John Rhea of Tennessee, Matthias Richards, John Rowan, John Russell, James Sloan, John Smilie, Jedediah K. Smith, Samuel Smith, Henry Southard, Richard Stanford, William Stedman, Clement Storer, Lewis B. Sturges, Peter Swart, Samuel Taggart, Benjamin Tallmadge, John Taylor, David Thomas, John Thompson, Jabez Upham, James I. Van Allen, Archibald Van Horne, Killian K. Van Rensselaer, Jesse Wharton, Robert Whitehill, Marmaduke Williams, and James Witherell.

NAYS—David Bard, Joseph Barker, John Blake, jun., Thomas Blount, John Chandler, John Clopton, Daniel M. Durell, Edwin Gray, William Hoge, James Holland, Daniel Ilsley, Robert Marion, Jeremiah Morrow, Roger Nelson, Thomas Newbold, John Randolph, Alexander Wilson, and Richard Winn.

MONDAY, December 28.

On motion of Mr. CLOPTON,

Resolved, That a committee be appointed to consider what provisions ought to be made, by law, for taking evidence in cases of contested elections of members of the House of Representatives of the United States; and that they have leave to report by bill, or otherwise.

Ordered, That Mr. CLOPTON, Mr. QUINCY, Mr. THOMAS, Mr. MARION, and Mr. G. W. CAMPBELL, be appointed a committee, pursuant to the said resolution.

The House resolved itself into a Committee of the Whole on the bill to extend certain privileges, as therein mentioned, to Anthony Boucherie. The bill was reported without amendment, and ordered to be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill supplemental to an act, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee;" The bill was reported with several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the report of the committee of the nineteenth ultimo, to whom was referred the petition of Andre Joseph Villard; and, after some time spent therein, the Committee rose and reported to the House their agreement to the same, with an amendment; which was twice read, and, on the question put thereupon, agreed to by the House.

The resolution, as amended, was again read in the words following, to wit:

Resolved, That the sum of one thousand dollars be

paid to Andre Joseph Villard, out of any money in the Treasury, not otherwise appropriated, for his invention and improvement in the mode of mounting heavy cannon for batteries.

And, on the question that the House do agree to the same, it was resolved in the affirmative.

Ordered, That a bill, or bills, be brought, in pursuant to the said resolution; and that Mr. JACOB RICHARDS, Mr. WILSON, and Mr. NEWBOLD, do prepare and bring in the same.

AMENDMENTS TO THE JOURNAL.

Mr. RANDOLPH said, he perceived that the supplemental (secret) Journal laid upon their table this morning, was in one particular incorrect, and, for aught he knew, might be so in others. The Journal stated the resolution moved by Mr. R. respecting an embargo as having being postponed previous to the receipt of a message from the Senate, accompanying the law passed by that body on this subject. Now it must be recollected by every member of the House, and particularly by his worthy friend from North Carolina who made the motion for its postponement, that while the resolution offered by him, (Mr. R.,) was under discussion, a message was received from the Senate, informing the House that they had passed a bill to a certain effect; and upon taking up the message, his friend from North Carolina made a motion for postponement of the resolution under consideration; to which motion there was no opposition. From the Journal it would appear that the message from the Senate was not received till after the postponement of the resolution. Mr. R. now moved such an amendment as the case required, and which would make the Journal in this case what it ought always to be, a correct transcript of proceedings as they actually happened; for he had observed that the proceedings of the House were often forced from their natural course, the Clerks supposing themselves required to pursue a certain established form, rather then a detail of facts as they actually occurred.

Mr. RANDOLPH then moved to amend certain entries in the Supplemental Journal of proceedings of the House at the present session, respecting which an injunction of secrecy was moved, on the twenty-second instant, in page second, to read as follows:

"On motion of Mr. RANDOLPH and seconded, that the House do come to the following resolution:

"*Resolved*, That an embargo be laid on shipping, the property of citizens of the United States, now in port, or which shall hereafter arrive:

"And debate arising thereon,

"A message, pending the same debate, was received from the Senate, by Mr. Otis, their Secretary, as follows:

"Mr. Speaker: The Senate have, in confidence, directed me to inform this honorable House, that they have passed a bill, entitled "An laying an embargo on all ships and vessels in the ports and harbors of the United States; to which they desire the concurrence of this House. And then be withdrew: Whereupon,

"It was moved by Mr. Macon, and ordered by the House, that the said motion of Mr. Randolph do lie on the table.

"The bill sent from the Senate, entitled 'An act laying an embargo on all ships and vessels in the ports and harbors of the United States," was read the first time.

"On motion,

"The said bill was read the second time, and ordered to be committed to a Committee of the whole House on the state of the Union."

And, on the question that the Supplemental Journal of the eighteenth of the present month be so amended, it was resolved in the affirmative.

On motion of Mr. GARDENIER, to amend the aforesaid Supplemental Journal, in the fourth page, by inserting the following amendment, immediately after the words "Monday, December twenty-one, one thousand eight hundred and seven," to read as follows:

"A motion was made by Mr. Gardenier, and seconded, that the House do come to the following resolution:

"*Resolved*, That the President of the United States be requested to lay before the House copies of all such communications, letters, and papers, as may have been received from the American Minister at Paris, in relation to the Imperial decree of the twenty-first of November, one thousand eight hundred and six: and particularly, such communications as he may have received from our said Minister at the time of receiving the papers which were laid before this House on Friday last: Whereupon,

"The question being stated from the Chair, that the House do now proceed to take the said motion into consideration,

"It passed in the negative."

And, on the question that the Supplemental Journal of the twenty-first be so amended, it was resolved in the affirmative.

DRAWBACK AND EMBARGO.

Mr. CROWNINSHIELD said, he rose to offer two resolutions, which he considered of importance to be considered at this time:

Resolved, That the Committee of Commerce and Manufactures be instructed to inquire into the expediency of allowing further time to obtain the benefit of drawback upon goods, wares, and merchandise, exported to foreign countries, than is at present allowed by law, with leave to report by bill, or otherwise.

Resolved, That the Committee of Commerce and Manufactures be instructed to inquire into the expediency of amending the act laying an embargo on vessels in the ports of the United States, so as to impose more effectual restraint on the departure of ships and vessels, and on the exportation of goods, wares, and merchandise, to any foreign port or place; with leave to report by bill, or otherwise.

Mr. CROWNINSHIELD said, the first resolution proposed an extension of the time now allowed for obtaining a drawback on goods, re-exported from the United States. It would be recollected by the House that twelve months was the time now allowed; while the embargo continued, which locked up the exportation of all foreign goods, it would bear extremely hard upon merchants generally, if the time for obtaining drawback was not extended beyond twelve months. Such an extension would not take from the Trea-

sury a single dollar, while it would accommodate the mercantile interest. He would mention a case: suppose that a merchant now had a large quantity of sugar, coffee, or pepper, which might have been in the United States eight or ten months; suppose the embargo should continue, as was possible, for six or even twelve months; the time limited for obtaining drawbacks would have elapsed before the termination of the embargo, and the owner of sugar, coffee, or pepper, would have paid into the custom-house a large sum of money on their importation, and when he should be permitted by law to export these articles, he could not obtain a drawback. Mr. C. repeated, that this measure would afford a facility to merchants, at the same time that it would not affect the Treasury.

By the law lately passed laying an embargo, he did not perceive that any penalty was imposed on vessels other than registered or sea-letter vessels, clearing out for a port in the United States and not relanding their cargo according to clearance. The second resolution went to authorize a committee to report a bill to impose a further restraint. As the law now stood, vessels, other than registered or sea-letter vessels, might clear out to Boston or New Orleans, and slip off to any port in Europe or elsewhere. He believed the penalty in such case did not exceed five hundred dollars, the forfeiture of which would prove a very ineffectual restraint. Mr. C. wished the embargo to be general in its operation, and not to affect one portion of the mercantile interest more than another.

Mr. DANA said, however gentlemen might differ in relation to the policy of imposing an embargo at this time, since the measure had been adopted, it would certainly be the wish of all that it might be attended with the best effects; and it would be well that it should not operate with too great a pressure on particular individuals. It was very certain that an embargo could not be continued for a year, or even for six months, without materially injuring that class of merchants which had traded much without an extensive capital, and whose stock consisted in talents, enterprise, and integrity. Of one hundred millions annually exported from this country, about sixty were of foreign, and forty of domestic growth, or manufacture. To obtain the benefit of drawback on importations, merchants must re-export within one year; if the embargo continued one year, it must leave on hand a great quantity of foreign goods, which would not be wanted for our own consumption, and of course produce numerous bankruptcies. If Mr. D. understood the first resolution it went to provide for relief of persons holding these goods.

The second resolution appeared to have for its object the giving a complete and equal operation to the act laying an embargo; Mr. D. therefore conceived it ought also to be adopted.

These resolutions were then agreed to, without a division.

And, on motion, the House adjourned until eleven o'clock to-morrow.

TUESDAY December 29.

The House resolved itself into a Committee of the Whole on the bill to continue in force, for a limited time, an act, entitled "An act continuing, for a limited time, the salaries of the officers of Government therein mentioned;" The bill was reported with an amendment; and the consideration of the bill and amendment postponed until day after to morrow.

Mr. WILLIS ALSTON, from the Committee of Ways and Means, presented a bill continuing in force, for a farther time, the first section of the act, entitled "An act farther to protect the commerce and seamen of the United States against the Barbary Powers;" which was read twice and committed to a Committee of the Whole to-morrow.

On motion of Mr. BASSETT, that the House do come to the following resolutions:

Whereas the Constitution of the United States provides that no officer of the Government shall be eligible to a seat in either House of Congress, thereby establishing the genuine Republican principle, that the members of the Representative body should be exempt from every improper bias; and, as it is the bounden duty of the Representatives of the people to give the fullest effect to Constitutional principles—

Resolved, That provisions ought to be made by law, to prohibit the officers of Government from making any contract, on behalf of the United States, with any person being a member of either House of Congress, or with any other person for his or their use.

Resolved, That every contract hereafter to be made on the part of the Government of the United States, shall contain a clause or condition to render the contract absolutely void, if the contractor should be elected a member of either House of Congress.

Resolved, That any officer infringing the foregoing provisions, ought to be punished by removal from office, and incapacity of ever after holding any office whatever.

Ordered, That the said motion be referred to a Committee of the Whole House on Monday next.

Mr. MACON said he wished to introduce to the notice of the House a subject which was last session before them, but which was not then finally acted on. He meant the subject of the pensioners of the several States, who had received known wounds during the Revolutionary war. It would be recollected that, two years ago, the House of Representatives had directed the Secretary of War to call upon the several States for a list of all the invalids who were placed on the pension list of each State. To bring this subject again before the House, and to put all the States on equal footing with regard to the pension list, he moved a resolution to this effect, which was adopted:

Resolved, That the Committee of Claims be instructed to inquire into the expediency of placing on the pension list of the United States the persons on each State pension list, in consequence of wounds received in the Revolutionary war.

Mr. MACON said that he had understood the return from North Carolina had been lost or mislaid; he therefore presented an authenticated copy

of that return; which was referred to the same committee.

Mr. Bibb, from the committee appointed to inquire whether the Representative Hall could be made fit for the purposes of speaking and hearing, reported the following resolution, which was agreed to:

Resolved, That the Committee of Accounts be instructed to direct the hanging of baize curtains between the columns, and that they defray the expenses thereof out of the contingent fund.

An engrossed bill extending certain privileges therein mentioned to Anthony Boucherie, was read the third time, and passed.

An engrossed bill supplementary to an act, entitled "An act regulating grants of land, and providing for the disposal of lands south of Tennessee," was read the third time, and passed.

IMPORTATION OF SLAVES.

Mr. Marion presented the petition of sundry merchants and others, in Charleston, South Carolina, stating that many vessels had cleared out from thence for the purpose of importing slaves, before the law was passed by Congress prohibiting the importation of slaves, and some had cleared out immediately after the passing of the law, and had been detained by accidents beyond the time limited by law; and praying that a law may be passed affording them relief.

The question being put on a motion made by Mr. Marion for a reference of this petition to the Committee of Commerce and Manufactures—

Mr. Masters said, if there was any subject in favor of which a petition should not be referred, it was the slave trade. These petitioners knew when the prohibitory law would go into operation, and they were not entitled to relief by the laws of God or man.

The motion for reference was negatived—yeas 37, nays 39.

FOREIGN ARMED VESSELS.

The House went into Committee of the Whole on the bill from the Senate, for the maintenance of peace and for preserving the authority of the United States in the ports, harbors, and waters within their jurisdiction.

The bill having been read through by paragraphs as far as the seventh section without opposition—

Mr. Burwell said that he should move that the Committee rise and report progress. He had not expected that this bill would have been called up at this time, and was not prepared to give a vote on it. The House was now extremely thin, and upon the discussion of a bill of this importance, every member of the House should be present. He was perfectly unprepared to act on this subject, and the more he reflected the more he thought they should deliberate before they gave the President of the United States the power of interdicting our ports and harbors to foreign armed vessels; it was a power exclusively reserved to Congress. This bill would, besides, place the Executive of the country in a very awkward situation, requiring from him services which the existing state of the country would not authorize him to perform. It was well known that it had been doubted whether the United States possessed a force competent to expel foreign armed vessels from our waters. If it was necessary to adopt such a measure, the power should certainly be left with Congress, and no authority given to the Executive to do an act which might involve the country in war.

The Committee then rose, reported progress, and obtained leave to sit again.

THE EMBARGO ACT.

Mr. Newton, from the Committee of Commerce and Manufactures, reported, in conformity with the resolutions moved by Mr. Crowninshield yesterday, a bill supplementary to the act, entitled "An act laying an embargo on all ships and vessels in the ports and harbors of the United States."—Read twice, and referred to a Committee of the Whole.

Mr. N. said, as the bill was very important, and it was necessary that it should pass through with as much expedition as possible, the law laying the embargo being very defective, he moved that it be made the order of the day for this day.

Mr. Quincy objected to its consideration to-day, as the amendment was proposed to an important law; and if the supplementary law were passed in too much haste, it might be necessary in a few days to pass a law to amend the amendatory law. He wished it to be laid on the table for this day, that they might come to-morrow prepared with all their intelligence on the subject.

Mr. Crowninshield was in favor of an immediate discussion. Gentlemen would recollect, that by the law laying an embargo, no penalties had been laid on vessels departing contrary to its provisions. It was true that registered vessels going from port to port were obliged to give bond that they would not land their cargoes at any foreign port; but no restriction was placed on licensed or coasting vessels. He had in his hand a letter which stated that certain vessels of the latter description were now changing their registers, and making out coasting licenses, as there was no restraint imposed on these by the act, and they might slip off to a foreign port with their cargoes. Another provision of the act contemplated the extension of the time for obtaining drawbacks. He hoped gentlemen were all ready to say that the defects in the law should be remedied; and he therefore hoped the bill would be this day considered.

Mr. Lyon said he should not agree to consider the bill till he had taken it home with him, read it, considered, and slept upon it.

Mr. Nicholas pressed the necessity of an immediate discussion.

To-morrow being named as the day, the question was, of course, first taken on that day, and negatived—yeas 21. To-day was then agreed to without a division.

The House then went into Committee of the Whole, on the bill this day reported, for amending the embargo law.

The first section having been read—

Mr. QUINCY said, when the law imposing the embargo was before the House, he had the honor to submit a motion with respect to fishermen. This was rejected on the ground that it was important to keep our men within the United States. This amendatory law, he presumed, was intended to give fishing vessels a limited privilege of going out to fish. Mr. Q. doubted whether the law would be effectual, because it prohibited vessels from carrying goods foreign or domestic, salt excepted; it might by a strict construction exclude their apparatus or stores. That it might be clearly understood that this class of citizens were not to be deprived of their usual privilege, he moved that the following provision be added to the end of the section:

And provided, That nothing in the act to which this is a supplement shall be construed to prohibit the sailing of any ship or vessel duly registered, enrolled, or licensed for carrying on the whale and other fisheries, with the usual tackle, apparel, and supplies customary in a fishing voyage.

Mr. CROWNINSHIELD objected to the amendment as supererogatory; because he considered it implied in the law imposing the embargo that fishing vessels were excepted; and this he conceived to be the reason why the amendment then proposed by the gentleman last up had not prevailed.

Mr. QUINCY supported this amendment, conceiving his colleague's construction of the law incorrect; and believing that the amendment offered by him to the original law had been rejected for very different reasons than those just stated, and which were then urged.

Mr. W. ALSTON proposed to the gentleman to withdraw his amendment, in order to move the insertion of the words "apparatus and stores" after the word "salt."

Mr. MACON would rather the question should have been first tried on the principle, by striking out the clause excepting fishing vessels. In the decision on the amendment moved by the gentleman from Massachusetts to the embargo law, gentlemen had voted against it from different reasons. Mr. M.'s reason for voting against it was to keep within the limits of the United States everything which could sustain life. His reason for voting in favor of the bill (he knew it would bear hard on fishermen, but equally so on every part of the community) was, to try whether they could not produce an effect on the Powers of Europe; he therefore wished to prevent provisions or supplies of any kind from going out of the United States, until a settlement of our differences was had. If the bill were to remain in its present situation, and fishing vessels were to give no security for their return, he could not conceive why whale fishermen should not be as well included as fishermen on our banks. Was there not a motion now before the House, Mr. M. could move to strike out the exception in favor of fishing vessels, to try the question at once.

Mr. TAYLOR called the attention of the House to the section proposed to the embargo bill by the gentleman from Massachusetts, and which included every idea which was suggested by the present amendment. Mr. T. had understood that the bill now under consideration was intended to narrow down and clear the imperfections visible in the original bill. It appeared to him that it went to widen instead of narrowing the bill; it contained the very proposition which had in the discussion on the former bill been negatived 82 to 48. The same principle was precisely embraced; and he need say no more after stating the division on the former question.

Mr. QUINCY said that it was now intended to extend the provisions of the bill to whale and bank fisheries equally, and he thought this could be so restricted as to prevent infractions of the embargo on goods, wares, or merchandise. They had no more right to prevent fishermen from exercising their usual avocation, than to prevent a man from taking his produce from his own farm. This business could not be included under the general head of commerce; it was distinct from commerce altogether. He wished to have the sense of the House on this question specifically understood and clearly designated. It was therefore his duty to insist on his amendment.

Mr. J. MONTGOMERY said, that when this subject was before acted on, it was conceded that there were defects in the bill, and that a supplementary law might be brought forward to prevent evasions of the original law. This course was now pursued; the Committee of Commerce and Manufactures had reported a bill for preventing evasions that might be practised under the law imposing the embargo. Since that law had passed, information had been received that evasions were already practised under it; information had been received, that, as coast-wise commerce was permitted by the embargo, merchants were giving up their registers and taking out licenses; this was the practice of this day in several ports of the United States. It became their duty to provide a remedy for this elusion of the law, to close the door on evasion. What was the effect of the proviso under consideration? While the first section closed one door, the proviso, moved as an amendment to it, opened two doors. Was it not known that merchants sometimes did evade the provisions of laws, and that they were now exercising all their ingenuity to evade the law passed the other day? That law prohibited registered or sea-letter vessels from sailing, but permitted vessels to sail coast-wise; the merchants were therefore turning all their vessels into coasters; and if this law passed with the proviso they might call merchant vessels fishing vessels or whalers. Mr. M. hoped the good sense of the House would not open more doors to fraud or evasion than already were open under the embargo law. He considered this proposition a mere tub to the whale; and hoped it would catch no person in the House.

Mr. LYON considered with the gentleman from South Carolina (Mr. TAYLOR) that it was not intended that the fishermen should go out while other classes of citizens could not receive benefit from their lumber or tar. He was in favor of

telling these men explicitly that they should or should not go out.

Mr. BACON said, it appeared that these fisheries were a great and permanent source of wealth to the nation, and he believed the exercise of that occupation could be so regulated as not to let in any invasion of the general policy of the law: if this could be effected, there could be no objection to the object. The only question then was, whether such a provision could be made in favor of fishing vessels, as should prevent them from carrying on an illegal commerce, and shut the door on evasion? An amendment to this effect had been negatived the other day, not he believed because the House was opposed to the principle it contained, but because they did not wish the bill to be encumbered at that time by any other provisions than those it already contained. Neither this nor any other law could be so constructed that an evasion could not be made; but he believed that it might include the right of fishing without affecting the general provisions of the embargo. There was proposed, by the second section of the bill under consideration, a forfeiture and personal penalty on all persons infringing the general provision of the embargo law; a person might undertake a voyage contrary to law; but, if he did, he incurred this penalty. The small inconvenience (if any) which would arise from permitting fishing vessels to sail, would by no means counterbalance the ill-effects of a restriction to fishermen from pursuing their usual avocation. If this permission was not already implied he should be in favor of expressing it.

Mr. NEWTON explained the law in regard to licensing fishing vessels. Although vessels of more than 60 tons, were not usually employed in this trade, yet, if not otherwise engaged, vessels of 100 or 500 tons, might take out licenses for fishing. What had induced the committee to insert this clause in the bill was, that the people in the Northern States were accustomed to supply themselves with fish. As the law now stood, they were excluded from fishing even for their own use.

Mr. LIVERMORE said the amendment offered by the gentleman from Massachusetts, seemed to be opposed by different gentlemen on different grounds; and he must say that he was surprised to hear one of his colleagues object to it. The provision contemplated nothing more than rendering more explicit the first section of the bill. If the first section was essentially wrong, the proviso was unnecessary; if it was the intention of Congress to allow fishing vessels to go out, why not make the section more explicit. He had no idea of stealing a march upon the Legislature. If it was their intention, and he prayed that it might be, to let fishing vessels proceed on their business, let it be explicitly expressed. He did not know but the law imposing an embargo, which he opposed as much as he could, and the passage of which he should ever regret, might have afforded that privilege by implication; but as it had now become a question before the Legislature, he wished the intention to be explicitly expressed. Thus much in favor of the proviso: if that were rejected, he should still vote for the first section. He did not precisely know whether it was necessary now to go into a discussion of the propriety of allowing the full exercise of the business of fishing. He felt for the people who would by this act be forced to obtain a precarious subsistence by begging. To throw six thousand citizens out of employ, to cast them on the world, to force them to go to foreign countries for employ and livelihood, was to him a serious evil. He hoped that it would be decided that this class of citizens should not be altogether deprived of the means of subsistence; he could see no occasion for it. He conceived that a general embargo could not be intended to deprive them of what was their necessary avocation; the drawing something from the depth of the sea, the making something out of nothing. These men brought property into the United States to a large amount—a statement of the annual income of the fisheries, had fixed it at three milions of dollars—three millions out of nothing. To prevent them from following an avocation so beneficial to themselves and to the community, was in his opinion a serious evil. By suffering them to pursue their avocation on the ocean, did it permit these men to violate any existing law? There was in such a permission no other risk than the mere chance of their being captured or pressed into British service. He begged gentlemen who came from parts of the Union different from himself to exercise candor. He requested them to consider the effect of this embargo upon a large portion of his constituents; to weigh the question, whether they would do any essential service to the country by inhibiting this particular trade. He wished gentlemen to place themselves in the situation of these men, if they could, and consider for a moment that they were deprived of the means of obtaining a livelihood, which they could not obtain in any other way, and would be driven into service of foreign Governments, to obtain from them the protection refused by the United States. He did not pretend to more expanded views than others, but it was certainly astonishing to him, where gentlemen could discover a necessity for preventing fishermen from going on the ocean to obtain their accustomed livelihood. Whence could a benefit result to the United States, from such a denial? Was it considered an injury in the year 1794, that fishermen should exercise their calling, during the existence of an embargo? No. The only apprehension then was, according to documents which were read the other evening, that possibly the embargo might be evaded by fishing vessels exporting goods; it was then never imagined that going on the fishing grounds, and taking fish, could have an injurious tendency. As the law now stood he should put the same construction on it as the gentleman from Massachusetts; but as it might create difficulties among the collectors, he wished it to be more explicit, except and he hoped not, it was their intention to prevent fishing vessels from going out of the United States.

Mr. CROWNINSHIELD explained his reasons for opposing the amendment. He said that the same provision was already expressed in the first section of the bill, and implied in the embargo law; he was decidedly in favor of it, and that fishermen should be allowed to go on the banks, and bring their fish into the United States. He would not admit, even if the provision were stricken out of the first section, that their citizens would be obliged to starve in the streets, or seek employ in foreign countries. It was not the intention of the House to deprive these worthy men of the means of sustenance; and he did not wish such an idea to be impressed on the public. If they were deprived of their subsistence, they might think Congress had acted unjustly, but they would submit; they would not seek the service of foreign countries, more especially of Great Britain. He should not have risen, had not an attempt been made to convey an idea that he was opposed to the principle of the proviso; he was not opposed to it; he believed they ought to be allowed to fish; and he believed if the bill was allowed to pass as it now stood, that the Secretary of the Treasury would conceive himself authorized to permit them to go abroad on their fishing voyage; the Secretary himself, had told Mr. C. that he should so consider the intention of the law.

Mr. QUINCY expressed himself opposed to hastening the decision of a measure of so important and complicated a nature as this, without one moment's consideration. It seemed, from the conversation which had taken place, that an addition to this proviso would make it more palatable; he therefore moved to amend his motion by adding as follows:

And provided, also, That bond with sufficient security be previously given that such ship or vessel shall not, directly or indirectly, carry on any commerce whatsoever, during the voyage, and shall return with her fishing fare to some port or place within the United States.

Mr. MACON doubted whether the amendment as it now stood would be attended with its contemplated effect; for the first part of the first section excepted these vessels from giving bond, while the proviso proposed declared that they should give bond. While up, he would make a few remarks. The gentleman from Massachusetts (Mr. LIVERMORE) seemed to suppose that gentlemen who opposed the amendment wanted candor. Mr. M. supposed he must mean him, because he was the only person who had opposed it; he would not say whether this severe charge attached with justice to him, but the House would judge, who had so long known him. The same gentleman had said, if this exemption were not made in favor of fishermen, they would go to foreign countries. If this position was sound, the whole law was wrong. Where was the difference between fishermen out of employ and sailors out of service? Would not one, as soon as the other, seek foreign service? If they had so little patriotism, one description would go as soon as the other. The embargo was intended totally to stop our exports. But the gentleman said, fishing was a regular business. So was navigating vessels a regular business of seamen. It was the means by which they lived. Another gentleman from Massachusetts was not correct as to the construction given by the Secretary of the Treasury to the law; which operated no farther than the opinions of those concerned were in concurrence with this opinion. All the Secretary could do, was to give his instructions; and those who thought them not correct could appeal from his construction of the law.

Mr. LIVERMORE said, if any observation had fallen from him, impeaching the candor of the gentleman from North Carolina, he would retract it, for he had seen as much candor in the conduct of that gentleman as of any other within these walls. It was true he had called for candor on this subject, in which he was so nearly interested. He conceived that the feelings of some gentlemen might be different from the feelings of his constituents, and he called upon gentlemen, candidly, to consider the subject. He agreed with the gentleman as to the construction of the law; for every person concerned should put such a construction on a law as the words implied. Mr. L. thought they were now going too hastily on this subject; he had been of the same opinion when the embargo law was under consideration, and in every stage of it.

He thought they should not hastily have passed the law; and he had contended that there was no necessity for that precipitation which had prevailed, for taking a leap in the dark, when every consideration should have induced them to pause and proceed with deliberation. And the House were now proceeding with this bill without having had time to consider it; the Committee of Commerce and Manufactures had reported, and the House was called upon implicitly to follow them, without further light on the subject. The gentleman had said that the same argument would apply to sailors as to fishermen; that they might also throw off their allegiance to the United States. This was the very thing Mr. L. had contended in conclave, and would have contended for it longer, had not his voice been drowned by the noise which was made, and the determination which was manifested to prevent debate. The colossal power of a majority had put down the still small voice of reason, and had declared that strength alone should reign. While he had a right to give his voice, Mr. L. said, he would argue against measures brought forward and pressed on so precipitately, when founded on false or fallacious grounds. It seemed as if it had been determined to run headlong into them, without giving reason time to operate. If the present law were to be passed in this manner, in a few days, perhaps, gentlemen would come forward with a proposition to amend this, as this was a proposition to amend the former. From the short time which he had to consider the measure in its present form (though he had revolved the general measure and its ill effects repeatedly in his mind) he had not sufficient to consider the different provisions of the bill.

He therefore moved that the Committee rise, and obtain leave to sit again.

Mr. LOVE pressed the decision of the question on the amendment, and opposed the motion for the rising of the Committee. There was now no question of policy or impolicy of an embargo to be considered; the only question was, to secure that part of the citizens of the United States, who obtained a livelihood by fishing, from infractions of the general provisions of the law. Why should they deprive the fishermen of their wonted occupation, if they gave proper security that they should not touch at a foreign port? This was a plain question, on which every one could decide.

Mr. J. MONTGOMERY observed that the gentleman from Massachusetts (Mr. LIVERMORE) had done well in allowing the gentleman from North Carolina a claim to candor, for his conduct ever did evidence his liberality. But were not other gentlemen entitled to the same allowance? Mr. M. was not much acquainted with the gentleman from Massachusetts, but he should conceive, from the language he had used, that the anathema which he had pronounced against others, recoiled upon himself. What did the gentleman mean by the colossal power of the majority? Where did this exist to the exclusion of the still small voice of reason? Mr. M. had seen no evidence of it in this House, during the discussion of the law, which the gentleman had alluded to. If that gentleman had a particle of candor in his composition, he would appeal to it, whether liberality and forbearance were not the order of the day? What was the conduct of the majority on that evening when language was used unworthy of a Representative or a citizen? They manifested a forbearance at which he had been astonished. While he was up, Mr. M. said, he would take occasion to notice a letter, which appeared in the New York and other papers, purporting to be a letter from a member of Congress, bearing date the 19th of December.* Mr. M. could not believe that any gentleman on the floor could use such language as was contained in that letter. What member would rise in his place, and tell the House that they were under French influence, knowing, as he must, that no such influence existed? What man would tell the House that French influence guided them, and that they, in consequence of it, were acting in conclave? What man would express his abhorrence of their proceedings, and tell them that their conduct was infamous? Mr. M. could not conceive that any man who could use this unprincipled language, would be entitled to a seat on this floor. No; he would not believe that this letter could be written by a member of Congress; he must pronounce it a foul, base, and unprincipled calumny.

The law of embargo was now passed; it was the duty of every man to rally around the measure, and of Congress to make such amendments as would render it complete. It was now a late hour, but he thought the principle under consideration should be decided before they adjourned.

The motion for the Committee to rise was negatived—ayes 32.

Mr. MILNOR said the House was now very thin, and it was desirable that, on measures of so much importance, they should have a full expression of the opinion of the House. When the original embargo law was passed, a large number of members were present; it was then wished to postpone the bill, and in vain urged that there had not been sufficient time maturely to digest it. The present bill contemplated an amendment to that act; and as it had been but a very short time before the House, he hoped they would have further time to consider it. He was not prepared to vote for this amendment; for although he might be in favor of fishermen pursuing their usual employment, the license for that purpose should be so restricted as to render evasion impossible. True, he did not vote for the law laying an embargo; but, since it did exist, he wished that it should be carried into full effect—that there should be no evasion; and he sincerely wished it might answer the purposes contemplated by the gentleman who first proposed it. He understood that one of the principal objects of the embargo was to preserve our seamen. Now, if a free and unrestrained license were granted to fishermen, it would be the means of drawing out a large proportion of our seamen, and thus expose them to impressment by the British. This was one great reason which should induce him to vote against the amendment. He was not, however, prepared to decide, and wished further time to digest it; he considered it a matter of more importance than most gentlemen seemed to be aware of. If every vessel in the United States was at liberty to take out a fishing license, it was necessary to guard the privilege by strong restrictions and large security. As the bill under con-

* The following is the letter alluded to. It originally appeared in the New York Evening Post, and is pronounced by the republican prints of New York, the production of Mr. Gardenier. It will be remarked, from its date, that it was written while the injunction of secrecy still remained in force:

"WASHINGTON, *Dec*, 19, 1807.

"DEAR SIR: Yesterday we received a Message from the President of a confidential nature. We immediately closed our doors, and they are still closed. Of course, I am not permitted to inform you either what the President has communicated to us, or what we have done in consequence of it. But I may be permitted to tell you we are doing no good. I fear we are about to plunge the nation into the most dreadful calamities—unnecessarily and wantonly. I am now more than ever persuaded that there is but too much French influence. And it is well that those who succumb to it, should act in secret. This is the reason, and I pledge myself to you, almost the only reason why we sit with closed doors. Our deliberations no more require secrecy at this moment, than they did when we were debating the subject of fortifications. Nay, sir, we are, in my opinion, violating the great rights of the people, by sitting at this moment with closed doors. I cannot express to you, in terms sufficiently strong, my abhorrence of what we are doing, and the manner in which we are doing it."

sideration now stood, it expressed that bond with sufficient security should be given; this loose and undefined expression would put it in the power of the officers of the revenue to connive at evasions. He was opposed to the amendment under consideration, and even to the section as it now stood.

Mr. SMILIE hoped the Committee would decide on the amendment, when it might be proper to rise and resume the subject to-morrow morning; at the same time, he thought the bill should pass as soon as possible. When gentlemen were talking on this subject, he wished them to consider whether other classes of citizens were not equally affected by this measure, as fishermen. He wished the House to recollect that the measure which it had been obliged to adopt, subjected the whole agricultural interest to great inconvenience, and did not affect commerce only? Would they have ever had a contest with Great Britain or France, but for the carrying trade? They would not. Had not their tables been loaded with petitions from these men for years past, calling upon Congress forcibly to take some measure for the protection of their men and vessels? Had not this been the class of men who had called most loudly for energetic measures, and should they now enjoy an exemption while all other classes suffered deprivation? He hoped not. With respect to seamen, he entertained an opinion different from that which had been expressed by some gentlemen; he thought they had too much patriotism to go into foreign service; they had been tried and found worthy of trust, and would be found so now. The House had been told that these men, thrown out of employ, would be obliged to beg in the streets for subsistence. Mr. S. said, such would not be the case; the man who in this country wanted bread, must be a man who did not deserve it. If men could not find subsistence on the water, their country was blessed with an abundant soil. What did gentlemen mean by opposition to measures now adopted? Did they intend to give up all claim to our rights as an independent nation, or did they mean to make a stand against oppression? If they meant to contend that the power of making money was more valuable than our national rights, let them openly express it. What measure would they propose as a substitute to that which had been adopted? They had not submitted any other when this was under consideration. He hoped he should be clearly understood as conveying the idea that, while he was willing to do justice to the mercantile interest of the country, and grant them any protection which was consistent with the honor and interest of the country, they must not look for exclusive privileges; they must partake of the general stock, and suffer the same privations as other parts of the community.

Mr. QUINCY said that fishermen and merchants, whom the gentleman last up had confounded together, were totally distinct classes of people. The object of the embargo was expressed in the Message of the President of the United States, and it had no other object than that. The allowing fishermen to go about on the coast and banks to obtain a livelihood (the only way in which they could support themselves) was not at all within the object for which the President had recommended an embargo. Gentlemen had said that they could obtain a livelihood on land. Mr. Q. said they could not; they were accustomed only to water. Would the House then doom this industrious class of people to distress and want, by a deprivation of their only means of subsistence?

Mr. HOLLAND moved that the Committee should rise. He believed that no gentleman wished to deprive any particular class of citizens of their occupation, but merely to secure the general embargo from infraction; and this they would do more effectually after further consideration.

The Committee then rose, and obtained leave to sit again.

WEDNESDAY, December 30.

A Message was received from the President of the United States, communicating to Congress letters from Governor Hull, respecting the Indians in the vicinity of Detroit, residing within our lines. The Message and letters were read, and referred to the committee appointed, on the twenty-ninth of October last, on so much of the Message of the President of the United States, of the twenty-seventh of the same month, as relates to the Military and Naval Establishments.

THE EMBARGO ACT.

The House resolved itself into Committee of the Whole on the bill supplementary to the act laying an embargo.

Mr. QUINCY's motion for amending being yet under consideration,

Mr. NEWTON said, that as considerable difficulty had yesterday arisen on the consideration of the bill, from the clause respecting fishermen not being sufficiently explicit, if the gentleman from Massachusetts would withdraw his motion, he would propose a new section as a substitute to the first.

Mr. QUINCY said he had no particular preference for any form, if he obtained his object; and withdrew his motion for adding a proviso, when,

Mr. NEWTON moved to strike out the first section of the bill; which being agreed to,

Mr. NEWTON moved the insertion of a new section, to the same effect as the other, but in somewhat different terms.

Mr. MACON, to settle the principle at once, moved to strike out that part making an exception in favor of fishing vessels.

This motion was negatived—ayes 23.

The new section, moved by Mr. NEWTON, was then agreed to without a division.

The bill then progressed by paragraphs. In the course of its consideration, many verbal amendments were made, not materially affecting the principle of the bill, on which a desultory conversation took place. The two most material amendments proposed are hereafter noticed.

The fourth section, imposing a penalty and for-

feiture on all foreign vessels which shall during the embargo "take on board any *specie or* goods" other than provisions, &c., being under consideration—

Mr. Macon did not wish to encumber this law for explaining the former law with provisions in themselves impracticable; he therefore moved to amend the section by striking out the words in italic, relative to specie; as he believed it would be utterly impracticable to enforce that prohibition.

This motion was supported by Messrs. Marion, Pitkin, Dana, Macon, and Quincy, and opposed by Messrs. Crowninshield, Newton, and Taylor.

The advocates of the motion generally contended for it on the ground of expediency; that if the exportation were not permitted, citizens indebted in foreign countries, could not pay their debts when they became due, as they were already prohibited from sending produce; that the denial of the right to export specie, would operate very severely on those merchants, as they must either lose their credit, or pay an enormous premium for bills of exchange, which would be above par, which loss some merchants, supposing that the present state of things would not continue for any length of time, would suffer rather than risk the destruction of their credit abroad, and of course of their business; that money was useful only when in circulation, and accumulated millions in the country would be a loss to the community; that such a prohibition would afford an opportunity for speculation, so much money being locked up in the country, dollars would become much below par in value, whereas a premium of three and four per cent. had been heretofore given for silver to send to the East Indies or China; that the general restriction on specie supposed to be implied in the former law, would affect only the master, commander, or owner, while every other person concerned, as sailors, &c., could not be prevented from carrying it on board; that an idea had been thrown out that this permission to export would indulge the merchant, and affect the planter injuriously, which was not correct, for it would be impossible to prevent this money going out of the country in some way; if it was possible to prevent its exportation from ports of the United States, it would exude through the channel of the neighboring provinces. It was also contended, that it was totally impracticable to prevent the exportation of specie; that the most powerful monarchies in the world, had in vain attempted that object; that the small bulk in which specie could be conveyed, would render it impossible to prevent its exportation; that such prohibitory laws generally had an effect contrary to that intended; and the experience of other Governments had proved, that from the moment such a law was enacted, specie became more and more scarce, till it could scarcely be procured at all.

Those who opposed the motion, and of course advocated the restriction of exportation of specie, contended that it was highly expedient to prohibit the exportation, because, if it were allowed, foreigners alone would be benefited by it, as they could bring goods from the West Indies or elsewhere, and carry specie in return. In reply to the hardship on merchants, which was complained of, it was said, that while planters and farmers were suffering by their produce having become of little or no value, it would be absurd to allow merchants to export specie merely because they would otherwise have to pay interest on money due by them in foreign countries. [Mr. Newton denied that bills of exchange would increase in value from the effects of embargo.] The effect of a permission to foreigners to export specie would be, that they could bring their produce or manufactures into this country and take away specie in return, while, by the general embargo, our produce was rotting in stores, and could not be exported; that the prohibition of the exportation was no doubt implied by the law laying the embargo, though it would be well it should be here expressed, as this law was intended to give the other a more effectual operation. In reply to the assertion of the impracticability of enforcing a law prohibiting the exportation of specie, it was contended, that, although foreign Powers had prohibited the exportation, it had been under a penalty merely of perhaps 10 or 15 per cent. on the amount, while the present law contemplated, not only the forfeiture of vessel and cargo concerned in the infraction of the law, but besides imposed a personal penalty for every offence of the kind; that the case of other nations, therefore, did not apply to this; that the prohibition could as easily be carried into effect on specie as on goods, the revenue officers being faithful, and seeing the laws strictly enforced; that it would be the duty of the Secretary of the Treasury to put an inspector on board every foreign vessel in port, and to retain him on board till such vessel sailed, to prevent the law from being infringed; that the small space occupied by specie would not afford so great an opportunity as was imagined of conveying it clandestinely away; for, although there was, by the general laws of the United States, a heavy duty on the importation of watches and jewellery, (which occupied as little compass at least as specie,) there were very few, if any instances, of their being smuggled into the country.

The question being taken on Mr. Macon's motion for striking out the prohibition on exporting specie, it was negatived—ayes 24.

Mr. Mumford offered the following proviso, to be added to the sixth and last section, which extends the time for obtaining drawbacks:

"And that the term now allowed by law for the payment of all bonds on goods, wares, and merchandise, imported into the United States, shall be, and the same is hereby, extended for and during the term of six months beyond the time specified on said bonds."

Considerable objection being made to this by several gentlemen on the ground of its being too extensive, and the difficulty of fixing a precise period for the extension of the time when these bonds should become due, and also from the great injury which the revenue would sustain from such a measure, the above amendment was so modified

as to extend the payment of the bonds beyond and during the continuance of the act laying an embargo. This motion was negatived—ayes 13.

The bill having been gone through, the Committee rose, and reported it to the House.

THURSDAY, December 31.

The House proceeded to consider the amendments reported yesterday, from the Committee of the whole House, to the bill supplementary to the act, entitled "An act laying an embargo on all ships and vessels in the ports and harbors of the United States;" and the amendments to the second and subsequent section of the said bill being twice read, were, on the question severally put thereupon, agreed to by the House.

The amendments to the first section being then under consideration, a motion was made by Mr. NELSON, to amend the said report by striking out the words, *or fisheries:* Whereupon, a debate ensued:

A motion was then made by Mr. RANDOLPH, that the said bill, with the amendments, do lie on the table, and was resolved in the affirmative.

GENERAL WILKINSON.

Mr. RANDOLPH then rose for the purpose of making a motion, and giving information to the House which he had just received. This was a duty which he owed, not only to himself, but to the enlightened and independent freeholders who gave him a seat on this floor, and to the country at large. Within a few days, information had been put into his possession, of a nature and on a subject which he deemed it proper for the constituted authority to inquire into. Had this information come earlier into his possession, he should not till now have delayed giving it publicity. He would first state certain facts, and those facts would be the ground of his motion, on which he should offer no argument. Mr. R. then read the following documents:

[TRANSLATION.]

NEW ORLEANS, *January* 20, 1796.

In the galley the Victoria, Bernardo Molina, Patron, there have been sent to Don Vincent Folch nine thousand six hundred and forty dollars; which sum, without making the least use of it, you will hold at my disposal, to deliver it at the moment that an order may be presented to you by the American General, Don James Wilkinson. God preserve you many years.

The BARON DE CARONDELET.

To Senor Don TOMAS PORTELL.

I certify that the foregoing is a copy of its original to which I refer. TOMAS PORTELL.

NEW MADRID, *June* 27, 1796.

FORT WASHINGTON, *Sept.* 22, 1796.

Ill health and many pressing engagements must be my apology for a short letter. I must refer you to my letter to the Baron for several particulars, and for a detail of my perils and abuses. I must beg leave to refer you to our friend Power, whom I find of youthful enterprise and fidelity. He certainly deserves well of the Court, and I don't doubt but he will be rewarded.

What political crisis is the present! and how deeply interesting in its probable results, in all its tendencies! ****and thereby must hope it may not be carried into execution. If it is, an entire reform in the police and military establishments of Louisiana will be found immediately indispensable to the security of the Mexican provinces. I beg you to write me fully on this question in cipher by Power, whose presence in Philadelphia is necessary, as well to clear his own character, attacked by Wayne, as to support the fact of the outrage recently offered to the Spanish Crown in his person, and to bring me either the person or the deposition of a man, now under your command, who had been suborned by Wayne to bear false witness against me, and afterwards, for fear he should recant, bribed him to leave Kentucky. Power will give you the perfect of this infamous transaction, and I conjure you by all the ties of friendship and of policy to assist him on this occasion. If Spain does not resent the outrage offered to Power in the face of all Kentucky****My letter to the Baron will explain the motives which carry me to Philadelphia: from thence I will write again to you. Power will explain to you circumstances which justify the belief of the *great treachery that has been practiced with respect to the money lately sent me.* For the love of God and friendship, enjoin great secrecy and caution in all our concerns. *Never suffer my name to be written or spoken. The* SUSPICION OF WASHINGTON IS WIDE AWAKE. Beware of Bradford, the Fort Pitt refugee—he seeks to make peace—there are spies everywhere. We have a report here that you are appointed Governor of Louisiana. God grant it, as I presume the Baron will be promoted. I am your affectionate friend.

W.

Copy of a letter in cipher received from General Wilkinson. Natchez, February 6, 1797.

MANUEL GAYOSO DE LEMOS.

In a separate paper, he says what follows:

This will be delivered to you by Noland, whom you know is a child of my own raising—true to his profession, and firm in his attachments to Spain. I consider him a powerful instrument in your hands, should occasion offer—I will answer for his conduct. I am deeply interested in whatsoever concerns him, and I confidently recommend him to your warmest protection. I am, evidently, your affectionate WILKINSON.

A copy. MAN. GAYOSO DE LEMOS.

N. B.—Don Gayoso was then Governor of Natchez, and the same year was made Governor of Louisiana.

Mr. RANDOLPH stated the following to be an extract of a letter signed "T. Power," whose handwriting, he said, could be identified:

"On the 27th of the same month [October last] appeared in the Richmond Enquirer a certificate given by myself to General Wilkinson in New Orleans on the 16th of May preceding. Immediately on my getting sight of this piece, which was the same or the next day, I addressed a note to his Excellency General Wilkinson, [No. 3.] Of this I did not keep a copy, and therefore dare not vouch that it is an exact literal transcript of the original; but I will be bold to say that it is nearly (or, to make use of the General's own language, *substantially*) the same.

"Between my repeated declarations to many of my friends and acquaintances (I must say it with a blush) and this certificate, there is a manifest contradiction. And between this same certificate and the deductions to be drawn from my declaration before the Richmond court there is an apparent inconsistency, which it is now my task to clear up and reconcile.

"During General Wilkinson's residence in New Orleans, last Winter, I used occasionally to visit him. A few days before he left New Orleans, I waited upon him one morning, and after some conversation on certain transactions that had taken place at a former period in the Western country, and on the delicate situation in which his conduct during the Winter was likely to place him, he asked me if I had any objection to give him a certificate that might help him to silence that foul-mouthed Bradford, and refute the assertions of the editor of the Western World. I replied without hesitation that I had none, and would give him one with pleasure, provided he promised me it should not be published. On this he assured me that the only use he proposed to make of it was to lay it before the President, with the view to prove the falsehood of the charges circulated against him, vindicate his character, and secure the confidence of the Executive. This, if not exactly, is *substantially* what the General said. He then desired me to sit down and write the certificate. I observed that I might not make it out entirely to his satisfaction; and that, as he best knew the points he wished should be embraced in it, he had better make it out himself, and I would copy it. To this he agreed. Next morning, I waited on his Excellency, and he presented me the certificate, which I copied, as it has been published, with a few alterations. One—a very material one—is that, after these words: 'Do most solemnly declare that I have at no time carried or delivered to General James Wilkinson'—I erased the words, 'either directly or indirectly,' and declared to the General that I could not insert those words. He did not insist, and contented himself with saying that he wished me to insert them if my conscience would allow it, but not otherwise. This is ingenuously exactly what passed between the General and myself at that time.

"Now let me, with the same frankness and ingenuousness, without referring to any preceding or subsequent event, narrate the transaction of 1796, alluded to in my certificate, and concerning which I offered to give testimony in the federal circuit court in Richmond. It is the same that is the subject of the affidavits of Messrs. Derbigney and Mercier. That of the former gentleman is correct as to substance, for I actually did receive from Captain Don Thomas Portell, commandant of New Madrid, the sum of $9,640 for General Wilkinson, towards the latter end of June or beginning of July, 1796, which was packed up in the manner described by Mr. Derbigney, and when I was stopped and my boat searched on the Ohio by Lieutenant Steele, under the orders of General Anthony Wayne; I had other sums on board, but this was the only one I had received from General Wilkinson. On my arrival at Louisville, determined not to expose myself a second time to military insult, and fearful of being overtaken by Steele on his return, and of again being overhauled, I landed my cargo, purchased a horse, and proceeded by land to Cincinnati. As I passed through Lexington, I published in Stewart's Kentucky Herald my affidavit concerning this outrage, supported by those of the spectators of the transaction, Welsh, White, and Sansom; preceded by a few strictures on this military piracy, signed Impartial. And I now take this opportunity of clearing General Wilkinson of the charge of being the author of it, as is asserted by Bradford, of New Orleans, and declare it was written by myself, and that, excepting Captain Campbell Smith, no person ever saw it before it was put into the hands of the printer.

"At Cincinnati I acquainted General W. with the circumstances that had occurred, and he gave me orders to deliver the money to Mr. Philip Nolan. These orders I punctually executed. Mr. Nolan conveyed the barrels of sugar and coffee that contained the dollars to Frankfort in a wagon. I there saw them opened in Mr. Montgomery Brown's store. The sugar and coffee I afterwards sold to Mr. Abijah Hunt, of Cincinnati.

"I shall take no notice of Mr. McDonough's affidavit. It does not refer to anything alluded to in my certificate. That part of mine that has reference to my mission to Kentucky and Detroit in 1797, I shall also pass over in silence, as it has no connexion with the present subject.

"I will now endeavor, in a few words, to reconcile what may appear contradictory and inconsistent in my certificate, and the declaration I have just laid before you.

"Was I base and dishonorable enough to descend to tergiversation, captious logic, and sophistical evasion, I could maintain that this contradiction does not exist, and that I never did carry or deliver to General Wilkinson any cash, bills, or property of any species. It is true, I delivered a certain sum of money, by his order, to Mr. Nolan; but Philip Nolan is not James Wilkinson; *ergo*, I may with a safe conscience swear that I never delivered James Wilkinson any money, &c., but I scorn to make use of any such pitiful, contemptible, and degrading mode of defence, and will allow for a moment that I did deliver to General Wilkinson the money in question. It is generally admitted that in politics morality is not to be measured by the same narrow scale as that which ought to regulate the moral conduct of men in their private concerns. The rigid stoic would, on a long run, make but a bungling politician; and the most austere moralist, if he has his country's interest at heart, and is acting in a public capacity, would not hesitate to do that which, as a private man, and in private concerns, he would shrink and recede from with horror and trembling precipitation.

"Let us now for a while suppose that I was a secret agent of the Spanish Government, and that General Wilkinson was a pensioner of said Government, or had received certain sums for co-operation with and promoting its views, and that those views and projects were inimical to that of the United States, should I be worthy of the trust reposed in me by my Government, were I to refuse to give General W. any document that might contribute to raise him in the good opinion of the Administration of his country, blazon his integrity and patriotism, and fortify him in their confidence, and by their means enlarge his power of injuring them and serving us? Surely not; or if I did, I should deserve to be hooted at as an idiot."

Mr. Randolph then said it would be waste of time to comment on what he had read, but he conceived it his duty to tell the House that he had good cause to believe that there was a member of this body who had it in his power, if the authority of the House were exercised upon him, if he were coerced, to give the House much more full, important, and damning evidence than that which had already appeared. He alluded to the gentleman from the Territory of Orleans, (Mr. Clark,) whom he had now the pleasure to see in his seat. If the United States were in the critical situation

which had been so often represented, and in which all considered them to be placed, in what position was the military force of the United States at this moment? Was it not proper that this business should be inquired into? He had been given to understand, long ago, that an inquiry on this subject was to be courted; it had not taken place. He had no more to say, but moved the following resolution:

Resolved, That the President of the United States be requested to cause an inquiry to be instituted into the conduct of Brigadier General James Wilkinson, Commander-in-chief of the Armies of the United States, in relation to his having, at any time, while in the service of the United States, corruptly received money from the Government of Spain or its agents.

Mr. CLARK said he unexpectedly heard himself named, and he would observe that it had been long supposed, from his residence in Louisiana, his acquaintance with military officers, and the various means of information which he might have possessed while Consul at New Orleans, that he was acquainted with certain transactions which had taken place in that country. The knowledge which he had possessed he had endeavored to impart to the Administration at different times, both verbally and by a written correspondence, to which a deaf ear had been turned. As this information had not been attended to, he had refused to gratify curiosity on the subject. And, notwithstanding the gentleman's calling upon him, he felt himself bound to say that he would not be influenced by fear, favor, or affection, to give any information on the subject, except compelled by a resolution of the House.

Mr. THOMAS moved that the resolution offered by Mr. RANDOLPH should lie on the table; but a motion made to consider was agreed to.

Mr. RANDOLPH said, as it appeared by the declaration of the gentleman from New Orleans, that he did possess information, and as the House had a right to it, he wished the Speaker or some other gentleman to inform him of the manner in which it might be obtained.

[No order was taken on this point.]

Mr. TAYLOR moved that the resolution be committed to a Committee of the Whole, not on to-day or to-morrow, but at a distant day, that time might be afforded for consideration.

After debate, Mr. TAYLOR withdrew his motion.

Mr. GARDENIER moved that it be referred to a select committee, with power to send for persons, papers, &c.

Mr. MARION moved to strike out that part of this motion giving power to a select committee to send for persons, papers, &c.

On the foregoing motions a very lengthy and somewhat desultory debate ensued of about five hours. The debate turned on many incidental questions, among which, whether Congress had a Constitutional right to request the President to cause the proposed inquiry to be made? To this it was answered that Congress had as much right to make this request as to request the President to lay before them public papers—either of which requests he might refuse. It was also said, that in making this request, the House could not command more attention than was due to a respectable individual.

It was doubted whether a member could be called upon to give information in his seat, or at the bar of the House? In answer, precedents were produced of cases in which members of the House had been interrogated at the bar.

It was also contended, that if delivered in his place, the communication would be liable to commentary or reply, by any gentleman who might think proper to discuss it, in the same manner as any other speech.

It was made a question whether this information could be more properly received by a Committee of the Whole, or a select committee, or by the House? It was said on this, that it had heretofore been the course of procedure to empower chairmen of committees in such cases to administer oaths; that in the House a member could be compelled to give information if the House thought fit, but in Committee of the Whole he could not be compelled; that if information or evidence were to be received in the House, it would perplex their proceedings by loading the table and journals with interrogatories, &c.

It was questioned whether it were proper to decide it now, to refer it, or to postpone it? On these points there appeared to be a great diversity of opinion—some thinking that the evidence which they had received was sufficient to induce them to pass the resolution without further consideration, being a mere request to the President to inquire; others wished farther time and more evidence previous to giving their vote on the subject, considering it of great importance; others were in favor of a reference to a committee, to consider all the foregoing points as well as the propriety of the main resolution; some wished this committee to have power to send for persons and papers, to report to the House their opinions on this subject, together with evidence, believing that positive and satisfactory evidence should be produced before they adopted this resolution, and as it was impossible to understand precisely the evidence now produced from the mere reading of it; other gentlemen wished it referred to a committee without power to send for persons, papers, &c., as they conceived the House did not possess power to enforce their orders in such cases, General Wilkinson being a military and not a civil officer, whom the President alone had power to remove.

None of these points were decided either directly or by implication.

In the course of this devious discussion, the succeeding observations on the main subject were made by different gentlemen.

Mr. W. ALSTON had heard nothing in the documents read to-day impeaching the character of General Wilkinson more than what the newspapers throughout the Union had teemed with for two years, except, indeed, a letter from Mr. Power; and who was Mr. Power, or what credibility could be attached to anything emanating from him? Every person in the United States who

could read knew his character. He was opposed to coercing evidence on considering a resolution proposing an inquiry, even if he were in favor of the inquiry.

Mr. Smilie thought the debate which had already taken place on a reference totally improper. He had heard sufficient evidence on this subject to convince him that such an inquiry was necessary; he did not think that there could be any further doubt on the subject. The House could not try General Wilkinson; he must be tried by another tribunal. They owed it to the country and to General Wilkinson himself to request an inquiry, and he hoped there would not be a dissenting voice on the question of agreement to the resolution. He could not give an opinion as to the guilt or innocence of General Wilkinson, but he thought it absolutely necessary that an inquiry should be had.

Mr. Gardenier was satisfied of the impropriety of proceeding on the consideration of any question of importance too hastily, more especially in a case so materially affecting an officer of high rank in the United States. He wished to have time to consider fully before he could vote on a subject of as much magnitude as this; they should not act from first impressions. If the subject were referred to a committee with power to send for persons, papers, &c., the testimony on the subject would come before them in a proper shape, and not with the inaccuracy which must always attend information given in this manner, but in a condensed form, in which its force might be fully felt. He did not wish to be precipitated into an inquiry too soon; neither did he wish an inquiry to be made because it was due to General Wilkinson. If this inquiry was courted by, and this motion intended as a favor to General Wilkinson, he was astonished that it had not been brought forward before. There certainly had been before ground enough shown for an inquiry into his conduct; but if General Wilkinson's conduct had so far evinced his purity as not to excite in the Administration even a suspicion against his character, if no inquiry had been made on the charges which had resounded from every part of the Union, Mr. G. did not wish now, merely for the sake of doing justice to that officer, to press an inquiry which the Executive had not thought proper to make. Neither did he wish rashly to decide on this question, because in doing this they would add the weight of their accusation to the cries of the whole nation; the united force of which no individual could repel.

Mr. Chandler said this was a subject which had been long before the nation, and with which they were all acquainted: if that officer was innocent, it was due to himself and his friends that an inquiry should be made; if he were guilty, it was due to the United States. The evidence produced was sufficient on which to ground an inquiry, and he was ready to decide without further time.

Mr. Nicholas had no doubt but an inquiry ought to be made: after what had been heard, if General Wilkinson were the lowest officer in the United States, he should be of opinion that an inquiry ought to be made, but he doubted whether this was a question on which they were now prepared to decide. For this reason he had seconded the motion for referring the resolution to a select committee, who could consider whether this subject came under cognizance of the House; he considered the House as a mere Legislative body, except in the single case of impeachment. He was not prepared to say what was proper to be done with this resolution, but his first impression was against acting on it. It would open doors for receiving complaints of the misconduct of any officer; he did not think this power was lodged in the House, and he had no wish to assume powers which did not pertain to them. As to the question whether there should be an inquiry or not, no man could doubt. An inquiry must be made. Would it be said that an office of this importance should be suffered to be retained by a man who had received a pension from a foreign Government? He thought it could not; and, therefore, he wished an inquiry to be made into the truth of this charge.

Mr. Burwell was decidedly opposed to reference to any committee whatever. It seemed to be the universal opinion that an inquiry ought to be had on the conduct of the Commander-in-chief of the Army of the United States; and it was highly important that the subject should be acted on speedily. If the nation was (as appeared probable) to be involved in war, it was necessary that the Commander-in-chief should possess the confidence of the Army, the People and the Government.

Mr. Johnson said the good people of Kentucky were interested in this subject. Many reports to the prejudice of General Wilkinson existed there; nothing certain had appeared against him, but the people entertained doubts on the subject; there were circumstances which they wished to be investigated; if nothing could be found against him, the sooner his innocence was known the better. Knowing this, he should not hesitate to give his vote in such a manner as to dispose of the subject most speedily. The investigation was due to the people, and to the man himself.

Mr. Macon said if ever there had been a time since the year 1783, in which it was particularly necessary that those persons in office should have the confidence of the Government and of the people, that time had arrived. Could it be expected after hearing the information which had been produced that the people would have confidence in General Wilkinson? It was as important that the Commander-in-chief should be free from suspicion as that the President or the House of Representatives should be unsuspected. The Commander-in-chief during the American Revolution was irreproachable; calumny never assailed him, and he of course enjoyed the full confidence of the people. The evidence which had been this day read, they were told had neither been before the grand jury nor the court at Richmond, and there was certainly sufficient on which to ground an inquiry.

Mr. TAYLOR observed, that he accorded with those gentlemen who had asserted, that in this important crisis it was of the highest importance that the character of the Commander-in-chief of the Army should stand fair and unimpeached; that on the first and hasty view he had taken of the subject it had appeared a sufficient motive for making the request to the President, as expressed in the resolution; but, from the ideas expressed from different parts of the House, he had been led to consider the proposed measure in a new and different point of view. The gentleman from Virginia had given the House certain information, and on that information had founded his resolution. It was true that this resolution contained nothing which would impeach any other person than the General; but gentlemen had called on the delegate from Orleans for information corroborating the statement of facts he had given; and the delegate had stated that he had at divers times given information to the Executive, and at other times endeavored to give it to the Executive, but that department had turned a deaf ear to his communications on the subject. The resolution then after this assertion, that the Executive had turned a deaf ear to the subject, assumed a new character—it amounted to this; that as you have not heretofore done your duty, we, the Representatives of the people, now request you to do it. Was the House prepared thus to publish to the nation their want of confidence in the Executive, upon the *ex parte* testimony which is now before them? Were they prepared now to interfere thus with a department of the Government, which in this instance they had not constitutionally a right to control—and to say, as that department had not done its duty, they would assume to themselves the important charge of taking care that the Republic shall suffer no injury? He hoped that neither the important crisis alluded to by gentlemen, nor the necessity of the case itself, or their sense of justice towards the gentleman accused, could draw them into such a commitment of themselves, in opposition, too, to the declared sentiments of a great majority of the nation, who had recently declared that this Executive had deserved well of its country.

General Wilkinson might be guilty or he might be innocent. Mr. T. had his own opinions, perhaps prejudices, on this subject. When the Constitution, or the mandate of a tribunal which had competent authority to compel him, should demand of him a publication of those opinions, he should give them; but, like the delegate from Orleans, he would not volunteer the affirmative vote of this House, for if such vote should be taken, it would be volunteering; he should not vote with them; he believed that the Department of State was by the Constitution free of their control, in respect to the proposed measure. They might, and he hoped would send the papers or documents in the hands of the mover, to the Executive, without any resolution on the subject. When they had given the information, they had fulfilled their duty. But, as respected the General himself, would he stand the same chance of acquittal by a court of inquiry or court martial, or by Executive scrutiny, when the prise and weight of an accusation from this House was set against him? He was for giving this officer fair play and the advantages of a fair and impartial trial.

Mr. RANDOLPH said the gentleman last up was mistaken in supposing that the evidence which he had laid before the House had been offered to the President of the United States and rejected. Nor was this at all a question of confidence or otherwise in the Executive, and he was astonished that any gentleman should attempt to convert it into a question of that sort; it was no such question. A member in his place had offered to the House a copy of an order of a Spanish Governor (or rather a translation of which the original could be produced) to pay $9,640 to General James Wilkinson; he had also offered a copy of a letter, certified by the Governor of Natchez, and immediately after Governor of Louisiana, which, unless possibly forged, established beyond a doubt the fact of the guilt of this commandant, not under the articles of war, for it had been this day suggested to Mr. R. that an officer was not amenable to military law for an offence committed so long ago—nor did he say under the common law or statute law—but that sort of offence which incapacitated that officer from the situation which he now held, and from which the President of the United States alone was competent to remove him. What did they ask the President of the United States to do by passing this resolution? To inquire: they left the mode of conducting that inquiry to his discretion. It was to inquire merely, and surely it was a strange doctrine to say that asking the President to inquire respecting the conduct of persons in high office under him, was an expression of diffidence in the Executive. Far from it: if anything it would show a confidence in the Executive, expressing a conviction that he would institute an inquiry, and upon the result of that inquiry do what was proper to be done. And what had this to do with diffidence in the Executive? They would make a question of adjournment before long a question of confidence; or on every question which came before the House would sound this tocsin, this whoop of want of confidence. The gentleman from New Orleans did not say that he had given evidence to the President of the United States and that the President had rejected it, if he understood him aright; he thought the gentleman said, that filling as he did an office of trust under the Government of the United States he had given that Department of Government with which he corresponded to understand that he possessed information of an important kind touching this character, and that he had received no intimation from that Department of a wish to receive it, and had therefore been discouraged from communicating the information which he possessed. The knowledge which that gentleman possessed related to information which the House had not yet heard, and not to that which Mr. R. now held in his hand; to the information which he hoped the House would use its authority (but respectfully) to compel that gentleman to

give. If the House acted on this subject at this time, could it be said that they acted from information of the gentleman from New Orleans, who had given none? If overtures to give information had been neglected, what had that to do with the information which Mr. R. had in his place laid before the House? The question was extremely simple. Had they power (to which he was astonished to hear an objection) to make this request? If they had, had they seen sufficient ground on which the prayer of the request should be granted? If they had the right to make the request, and he had laid before the House substantial ground for an inquiry, there was an end to all other questions on the subject. In the prosecution of the present business it would perhaps be found peculiarly difficult to adduce proof—and why? Because in taking possession of New Orleans, the commissioners—(and who were they? he wished the House to reflect upon that)—suffered the archives of the country to be ransacked; even papers relating to land titles were taken away; and it must be believed, and could not be doubted, that if one of those commissioners found in the archives of the former Government, in the Spanish bureau, evidences of his own guilt, he would not be so far lost to a sense of his own safety, as not to destroy such evidences as far as in his power. Fortunately, enough had been preserved to establish that point beyond all possibility of doubt; and it remained for the House to say whether it constituted a sufficient ground for inquiry or not. Whatever might be the decision of the House, said Mr. R., I shall respectfully submit; but be the decision what it may, I shall conceive a great object which I had in view in bringing this subject forward, to be completely answered.

Mr. Clark said that the information which he had heretofore attempted to convey, did not particularly relate to the subject now before the House. He then knew that various attempts had been made by the Spanish Government to detach the Western country from the Union; he had thought it incumbent on him, holding a commission under the United States, to state these facts to the Executive. When first he had the honor of being presented to the Executive, he had twice attempted to state these facts to him, who either did not or would not understand him, and changed the subject; at this he naturally felt hurt, and had not renewed personal communication on the subject. Some time subsequent to this, when the French were preparing to take possession of Louisiana, believing that they would discover those who were before attached to foreign government and secure them in their interests, he had thought it a duty incumbent on him to write to the Secretary of State, as the Constitutional organ of communication, and had stated his grounds of suspicion. He had twice attempted to make this known, and had officially written to learn whether he was understood. Of these letters no notice had been taken. He had then stated that the proofs in his possession might not be sufficient for conviction, but if time were allowed proof sufficient might be procured.

Mr. Thomas asked at what time these communications had been made?

Mr. Clark.—To the President of the United States in 1802; to the Secretary of State in 1803.

Mr. Sloan said, that although he could not consistently with the rules of order impeach the motive of the member who brought forward this resolution, he could question the propriety of passing it; the papers now adduced in evidence in his opinion amounted to no more than what had long before appeared in newspapers. He said that General Wilkinson had been formerly charged with malconduct before this House; Mr. S. said at that time he had declared that from what appeared, he considered General Wilkinson as deserving well of his country; that he had not discovered any cause to change his opinion; but, contrarywise, considered the various charges and insinuations as arising from malice or envy against him for having acted as the saviour of his country. From what the gentleman from Virginia had last said, it appeared that this resolution was to rest on the question whether there were sufficient evidence of guilt in that officer before the House to require an inquiry to be made. Would not the House by passing this resolution say that this was the case, and would it not be throwing the whole weight of the House of Representatives of the United States against him? It undoubtedly would. As yet nothing had appeared to induce Mr. S. to change his opinion, and till there was he should oppose every proposition of this kind.

Mr. Nelson made a motion to adjourn, which was negatived.

Mr. Smilie moved to postpone further proceedings on this subject till Monday; on which motion, the yeas and nays being called by Mr. Randolph, were—yeas 68, nays 48, as follows:

Yeas—Evan Alexander, Willis Alston, jr., Ezekiel Bacon, David Bard, Burwell Bassett, Thomas Blount, John Boyle, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, George W. Campbell, Peter Carlton, Epaphroditus Champion, John Chandler, John Clopton, Orchard Cook, Jacob Crowninshield, John Culpepper, Richard Cutts, Josiah Deane, Joseph Desha, Daniel M. Durell, William Findley, James Fisk, Barent Gardenier, Francis Gardner, Isaiah L. Green, John Heister, James Holland, David Holmes, Reuben Humphreys, Daniel Ilsley, Richard M. Johnson, Walter Jones, William Kirkpatrick, Nehemiah Knight, John Lambert, John Love, Nathaniel Macon, Robert Marion, William McCreery, William Milnor, John Montgomery, John Morrow, Gurdon S. Mumford, Roger Nelson, Thomas Newton, Wilson C. Nicholas, John Porter, John Pugh, Josiah Quincy, Matthias Richards, Ebenezer Seaver, James Sloan, John Smilie, Jedediah K. Smith, Henry Southard, Clement Storer, John Taylor, David Thomas, John Thompson, Jabez Upham, James I. Van Allen, Philip Van Cortland, Isaac Wilbour, Marmaduke Williams, and James Witherell.

Nays—William W. Bibb, Martin Chittenden, Matthew Clay, Howell Cobb, Samuel W. Dana, John Davenport, jr., John Dawson, James Elliot, William Ely, Meshack Franklin, Edwin Gray, John Harris, William Helms, William Hoge, Benjamin Howard, Joseph Lewis, jr., Edward St. Loe Livermore, Edward

loyd, Matthew Lyon, Josiah Masters, Thomas Moore, eremiah Morrow, Jonathan O. Mosely, Timothy Pit-in jr., John Randolph, John Rea of Pennsylvania, ohn Rhea of Tennessee, Jacob Richards, John Rus-ell, Dennis Smelt, Samuel Smith, Richard Stanford, William Stedman, Lewis B. Sturges, Abram Trigg, eorge M. Troup, Killian K. Van Rensselaer, Jesse Vharton, Alexander Wilson, and Richard Winn.

An adjournment was then called for: Where-pon, the House adjourned.

FRIDAY, January 1, 1808.

EMBARGO ACT.

The House resumed the consideration of the mendments, yesterday ordered to lie on the table o the bill supplementary to the act, entitled "An ct laying an embargo on all ships and vessels in he ports and harbors of the United States;" and he question being taken on the amendment pro-osed to the amendment reported by the Com-ittee of the Whole House, to strike out in the econd line of the first section of the said bill, the ords, *or fisheries:*

After some debate in which Messrs. LYON, HEA (of Tennessee,) MACON, and BLACKLEDGE, upported the motion, and Messrs. CROWNIN-HILD, SOUTHARD, NEWTON, SLOAN, DANA, and OLLAND, opposed it, the question on the motion as taken, and decided in the negative—yeas 29, ays 68, as follows:

YEAS—David Bard, William W. Bibb, William ackledge, Thomas Blount, Robert Brown, William . Burwell, William Butler, John Clopton, Howell, bb, Meshack Franklin, Edwin Gray, John Harris, avid Holmes, Edward Lloyd, Matthew Lyon, Na-aniel Macon, William McCreery, John Montgomery, homas Moore, John Randolph, John Rea of Penn-lvania, John Rhea of Tennessee, Jacob Richards, chard Stanford, John Taylor, Abram Trigg, George . Troup, Alexander Wilson, and Richard Winn.

NAYS—Evan Alexander, Willis Alston jr., Ezekiel acon, Joseph Barker, Burwell Bassett, Joseph Cal-un, George W. Campbell, Peter Carlton, Epaphro-us Champion, John Chandler, Martin Chittenden, chard Cook, Jacob Crowninshield, John Culpepper, chard Cutts, Samuel W. Dana, John Davenport, jr., siah Deane, Daniel M. Durell, James Elliot, Wil-m Ely, William Findley, James Fisk, Francis Gard-r, Isaiah L. Green, John Heister, William Helms, illiam Hoge, James Holland, Reuben Humphreys, aniel Ilsley, Richard M. Johnson, William Kirk-trick, Nehemiah Knight, John Lambert, Edward Loe Livermore, Robert Marion, Nicholas R. Moore, remiah Morrow, Jonathan O. Mosely, Gurdon S. mmford, Thomas Newton, Wilson C. Nicholas, Tim-y Pitkin, jr., John Porter, John Pugh, Josiah Quin-Matthias Richards, Samuel Riker, Ebenezer Seaver, nes Sloan, Dennis Smelt, John Smilie, Jedediah Smith, Samuel Smith, Henry Southard, William dman, Lewis B. Sturges, Peter Swart, Samuel Tag-t, David Thomas, John Thompson, Jabez Upham, nes I. Van Allen, Robert Whitehill, Isaac Wilbour, rmaduke Williams, and James Witherell.

The question was then stated that the House agree to the amendment of the Committee of e Whole House, to the first section of the said l, amended to read as follows:

SECTION 1. *Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled,* That, during the continuance of the act to which this act is a supplement, no vessel licensed for the coasting trade or fisheries shall be allowed to depart from any port of the United States, or shall receive a clearance, until the owner, consignee, agent, or factor, shall with the master give bond, with one or more sureties to the United States, in a sum double the value of the vessel and cargo, that the vessel and cargo shall not proceed to any foreign port or place; and that the cargo shall be re-landed in some port of the United States: *Provided,* That it shall be sufficient in relation to vessels licensed for the fisheries, or bound on a whaling voyage, and having no other cargo than sea stores, salt, and the usual fishing tackle and apparel, to give a general bond in four times the value of the vessel and cargo, that they shall not, during the continuance of the abovementioned act, proceed to any foreign port or place, and shall return with their fishing fare to some port or place within the United States.

A division of the question was called for by Mr. LLOYD, and, on the question to agree to so much of the said section, as is contained in the same, down to the word "Provided:" it was resolved in the affirmative.

The question was then taken that the House do agree to the residue of the said section, and resolved in the affirmative.

SATURDAY, January 2.

A motion was made, by Mr. RANDOLPH, to amend the Journal of the twenty-third and twenty-fourth ultimo, by striking out the word "*by*," immediately preceding the words "having the qualifications prescribed by the laws of Maryland," in pages one hundred and ninety and one hundred and ninety-three, of the printed copies thereof. And on the question that the Journal be so amended, it was resolved in the affirmative.

Mr. M. CLAY, from the committee appointed on the sixteenth of November last, presented a bill to amend the several acts more effectually to provide for the national defence by the militia of the United States; which was read twice and committed to a Committee of the Whole on Wednesday next.

The House resumed the consideration of the bill supplementary to the act, entitled "An act laying an embargo on all ships and vessels in the ports and harbors of the United States:" Whereupon, the bill was ordered to be engrossed, and read the third time to-day.

On motion of Mr. FINDLEY the House went into Committee of the Whole, on the report of the Committee of Elections on the contested election of John Culpepper, which declares his seat to be vacated on the sole ground that some of the inspectors of election were not sworn as required by the State law. After some debate, (in the course of which a motion to postpone was negatived, 50 to 27) the Committee of the Whole concurred in the report without a division, and reported it to the House.

The House immediately concurred in the report without a division.

On motion of Mr. BLOUNT, a resolution, was passed, 65, to 14, directing the Speaker to inform the Governor of North Carolina of this decision, in order that he may issue a writ for a new election. The minority in this vote wished to inquire, whether the person contesting (Duncan Mc Farland) was entitled to the vacated seat of Mr. Culpepper.

EMBARGO ACT.

An engrossed bill supplementary to the act, entitled "An act laying an embargo on all ships and vessels in the ports and harbors of the United States," was read the third time; and on the question that the same do pass, it was resolved in the affirmative—yeas 73, nays 22, as follows:

YEAS—Evan Alexander, Willis Alston, jr., Ezekiel Bacon, David Bard, Joseph Barker, William W. Bibb, William Blackledge, Thomas Blount, John Boyle, Robert Brown, William A. Burwell, Joseph Calhoun, George W. Campbell, Peter Carlton, John Chandler, John Clopton, Orchard Cook, Jacob Crowninshield, Richard Cutts, Josiah Deane, Joseph Desha, Daniel M. Durell, William Findley, Francis Gardner, Isaiah L. Green, John Heister, William Helms, James Holland, David Holmes, Reuben Humphreys, Daniel Ilsley, Walter Jones, Thomas Kenan, John Lambert, Edward St. Loe Livermore, Robert Marion, Josiah Masters, William McCreery, William Milnor, John Montgomery, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, John Morrow, Gurdon S. Mumford, Roger Nelson, Thomas Newton, Wilson C. Nicholas, John Pugh, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Matthias Richards, Samuel Riker, Ebenezer Seaver, James Sloan, Dennis Smelt, John Smilie, Jedediah K. Smith, Henry Southard, Clement Storer, Peter Swart, John Taylor, David Thomas, John Thompson, George M. Troup, James I. Van Allen, Philip Van Cortlandt, Jesse Wharton, Robert Whitehill, Isaac Wilbour, Marmaduke Williams, and James Witherell.

NAYS—Epaphroditus Champion, Martin Chittenden, Matthew Clay, Howell Cobb, Samuel W. Dana, John Davenport, jr., John Dawson, James Elliot, William Ely, Meshack Franklin, Barent Gardenier, Edwin Gray, John Harris, Nathaniel Macon, Jonathan O. Mosely, Timothy Pitkin, jr., Richard Stanford, William Stedman, Lewis B. Sturges, Samuel Taggart, Jabez Upham, and Archibald Van Horne.

MONDAY, January 4.

Mr. CROWNINSHIELD presented to the House a memorial and petition of Jonathan Grout, of the State of Massachusetts, stating that he is the inventor of the art of communicating intelligence by *telegraphs*, to a much greater extent, than has heretofore been known or practised in any part of the world; and praying that some person may be authorized on behalf of the United States to contract with him for the establishment of such line or lines of *telegraphs*, for the purpose of conveying intelligence of public or Governmental concern; or that such other contract on behalf of the public may be made with your petitioner, relative to the premises, as may seem meet and proper.—Referred to Mr. CROWNINSHIELD, Mr. NICHOLAS, Mr. FINDLEY, Mr. THOMAS, and Mr. TROUP, with instruction to examine and report their opinion thereupon to the House.

EMBARGO MEMORIAL.

Mr. PORTER presented a memorial from sundry merchants of the city of Philadelphia, stating that several vessels in that port had already received their cargoes and taken out clearances at the time of the passage of the law laying an embargo, and praying that such vessels, some of which had already departed the port of Philadelphia, and were detained in the river, be excepted from the general embargo; which was read, and a motion having been made to refer it to the Committee of Commerce and Manufactures—

Mr. NEWTON said he was not one who would ever object to the right of petitioning in decent and respectful terms; and should always be in favor of the reference of any petition when the House were not in possession of such information immediately relating to the subject as would enable them to decide without a reference. But where was the necessity for referring this petition? The House had passed a law laying an embargo; the ink in which it was traced was scarcely cold, when a petition was presented from a portion of merchants to allow these vessels to depart. Had the House passed the law with deliberation, or not? If they had, it became their duty to support it. If they referred this petition what might be the consequence? An opinion might go abroad that they wavered in opinion on the propriety of carrying into effect their own law; and if they granted the prayer of the petitioners, the same indulgence must be extended to all in the same situation. There was no port in the United States where vessels had not been loaded at the time of the passage of the embargo law, and yet had been stopped in consequence of that law. And what did the petitioners state? That their vessels were loaded, and from the operation of the embargo law were prevented from going. What was the object contemplated by the passage of that act? To keep the vessels and property of the citizens of the United States within their own jurisdiction. If this petition were to be referred, it would seem as if the House deliberated on the repeal of that law, and would encourage other petitions of the same nature. He hoped a reference would be refused, and that the petition should lie on the table.

Mr. PORTER hoped the petition would be referred. What injury could arise from allowing the petition to take the usual course? The House was not pledged to anything by consenting to the reference. They could reject or adopt the report or modify it. If they turned a deaf ear to applications that were made to them by the people; the practice obtained of rejecting petitions without deigning to consider their subject matter what, he asked, became of the right secured to every citizen by the Constitution, of petitioning the Government? Was it not rendering the right a mere nullity? The gentleman from Virginia

ad said that it would be proper not to refer this etition, as, by so doing, it would discourage oth- s from petitioning the Legislature on the same ubject. If the House were not disposed to grant elief to these petitioners, he thought, even in that se, it would be better to have a report stating e reasons of their refusal. This would be more tisfactory to the people than the mode pointed it by the gentleman. The case of the petition- s was peculiarly hard. They had obtained reg- ar clearances from the custom-house before they ceived notice of the embargo, and had incurred nsiderable expenses in preparing for the voyage. e was also informed that a great part of the operty would be almost a total loss to the ship- rs if it did not reach a market early in the pring.

Mr. MILNOR said, it would be observed that the titioners stated that they had actually cleared it their vessels before the embargo was notified. clearing out their vessels, previous to the inter- tion of embargo, they had complied with every ovision of the laws of the United States so far respected things under their control. They d not contravened any law of the United States, id had done no act which should subject them penalty or to loss. Now it seemed to Mr. M. be a question, whether vessels could of right detained when cleared out previous to an em- rgo? He did not mean to say that they could t; but he thought it might be a subject of in- iry, whether a law having that operation was t *ex post facto*. This petition, couched in de- nt language, related to a subject in which the erests of these people were deeply involved; y were in a situation peculiarly severe, having t only shipped property of a perishable nature board their vessels, but engaged the captains l crews for voyages. They must, also, be at a at and unavoidable expense in addition, be- se, he understood that they could not get clear the maintenance and pay of these seamen dur- the whole continuance of the embargo; those sels, which, though loaded, had not cleared , were not subject to the same inconveniences, ause they were not burdened with the great ense of supporting their seamen. Mr. M. was now prepared to say that he should be in or of an exemption in favor of those vessels ich had thus cleared out, but thought it a sub- t which ought to be inquired into. The gen- nan from Virginia had told the House, if they sed a law, it should be carried into effect. e it was, that they should enforce it as far as was equitable; but if, as was stated, this was a uliar case, and the petitioners endured much re than their portion of inconvenience, it was rthy of inquiry whether no method could be en to avoid inflicting on them that distress ich must overtake them if the law is rigidly rced. He hoped the petition would be con- red in the usual way, by reference. As to the ression going abroad that they were deliber- g on the repeal of that law, there could be no ght in that idea. The committee to whom should be referred might give solid and suffi- cient reason for continuing that provision of the law, or for granting the particular prayer of the petition.

Mr. COOK always was and always should be in favor of referring petitions from respectable persons clothed in decent language. The embargo law, of a provision in which these merchants complain, was well known to have been passed with great despatch, if not in a hurry; and that part which provides that vessels already cleared out should be subject to it, was a part which had escaped his particular attention on its passage. It appeared to him, in this particular, to be of the nature of an *ex post facto* law. He hoped that the petitioners might have a hearing, and that the facts would be submitted to a committee for investigation.

Mr. NEWTON, to exclude debate, withdrew his opposition to the reference.

Mr. BURWELL moved to refer this petition to a select committee, that it might be inquired into, and that the merchants of the United States might be given to understand that the House would pursue that course which would enforce the continuance of the embargo. He thought that by a reference to a select committee, such a report might be obtained as would evince to the nation the propriety of adopting the measure, and the reasons in its favor.

Mr. TAYLOR said he had not, on any occasion, allowed himself the liberty of treating with disrespect petitions from any portion of the people; and, in this case, he should adhere to the line which he had marked out for his conduct. And lest it might be conceived, from his voting in favor of a reference of this petition, that he participated in the sentiments of the petitioners, he deemed it proper to say that it was from principle alone that he should vote for considering it; and he must be permitted to declare that the petitioners themselves might be charged with as base motives as those from the same city who had been refused a reference of a petition on a former occasion during this session. He thought they might be charged with being induced by foreign influence to endeavor to paralyze every measure for the good of their country, or might be supposed to be among the acquaintances of Mr. Cobbet in America, so taken up with their idol, Mammon, with their zeal after profit, that they cared not what became of the country if their coffers were filled. He would compare the conduct of the merchants of the city of Charleston, whose petition was scouted the other day, with that of these men, who might either be called the votaries of Mammon, or by a worse name.

Mr. SMILIE saw no objection to the reference of this petition. He supposed that the hardships under which those persons labored, whose vessels were already loaded at the passage of the law, were very great. Under these considerations, he thought it would be proper to commit the petition, because it would require a particular report to be made upon it. When he said this, he was well convinced that general policy would not warrant the granting the prayer of the petitioners.

He thought, however, that the memorial should be referred.

Mr. Dana thought, if gentlemen so much respected the right to petition, they ought not to deprecate the insertion of all principles which did not exactly concur with their own opinion. If they made it a rule to reject all petitions not conformable to their own decisions, they rendered null and destroyed one of the great ends of petitioning, for it was when they were aggrieved only, that the people wished to petition; such conduct would in effect be saying, "We will not regard any petition whatever." He thought, therefore, the petition ought to be referred on general principles. Could gentlemen fear the answer which a reference of the petition might produce from the committee? Could they dread a comparison between the reasoning contained in the petition, and that which a report unfavorable to it might contain? The general rule of reference ought to be regarded, more especially of petitions on great public questions. Independently of this general principle, he thought there were special reasons for a reference of this petition: the case of vessels which were cleared out, and had on board all their cargo, as well as papers, when the law passed, and which had been detained in bays or rivers by adverse winds, was peculiarly rigorous. Vessels had been cleared out of Philadelphia, having on board foreign merchandise about to be exported; these vessels had proceeded on their voyage, but had been arrested in their progress, and brought back, by the operation of the embargo law. What was their situation? They would have to reland their goods at a loss of three and a half per cent. of drawback; and if they wished to export them six months hence, they must pay another three and a half per cent. upon them, because they had gone down the Bay of Delaware previous to the passage of the law, and had been brought back. Whether the Secretary of the Treasury possessed the power to remedy this defect, he did not know, but he believed he did. He wished the petition, however, to be referred to a select committee, to examine whether or not, in particular cases, the law laying an embargo operated more rigorously than was required by the general policy of the measure.

Mr. Porter merely rose to say that he held in his hand a certificate of the Collector of Philadelphia, verifying the facts stated in the petition; which was read.

The yeas and nays being required on the question of reference,

Mr. Crowninshield said, that he understood the petitioners to pray that vessels cleared out previous to the passage of the law laying an embargo, should be permitted to proceed to sea. It appeared to him that they asked what could not well be granted. This case did not apply to Philadelphia or Delaware alone, but to Baltimore and the Chesapeake, and to every port in the country. He had no doubt that there were several hundred vessels cleared out to foreign ports previous to the laying an embargo, and which were by it prevented from sailing. Should they be permitted, from that circumstance merely, to be exempt from the general embargo? He thought not. However his own interest or wishes might dispose him to this permission, he could not consistently grant their prayer. But was he therefore opposed to a reference of the petition? By no means. He believed the petitioners had always a right to petition, and he should uniformly vote for a reference of their petitions, when couched in decent and respectful language. But at the same time he should vote for a reference of the petition, he must say that he did not see any reason why these vessels should be permitted to depart. The House had said that they would prohibit vessels from departing, whether cleared out or not. The law would operate severely on these persons; he knew it would, but it would also operate severely on others. Those vessels would suffer great inconvenience which had goods on board, although they had not cleared out. He was in favor of a reference, in order to obtain any additional light that might be thrown on the subject, not as some gentlemen were, with a view to favor the prayer of the memorial. If gentlemen thought the embargo was wrong, let them submit a proposition to repeal it. He was prepared to meet it on fair grounds.

Mr. Smilie said the question now was, whether the petition should be referred to the Committee of Commerce and Manufactures. A proposition had been made to refer it to another committee. He hoped the House would not deviate from the common rule; for, if any subject was proper to be referred to the Committee of Commerce and Manufactures, it was this.

The question of reference was then taken, and decided in the affirmative—yeas 91, nays 16, as follows:

Yeas—Evan Alexander, Willis Alston, jr., Ezekiel Bacon, David Bard, Joseph Barker, William W. Bibb, William Blackledge, Thomas Blount, John Boyle, Robert Brown, Joseph Calhoun, George W. Campbell, Peter Carlton, Epaphroditus Champion, John Chandler, Martin Chittenden, John Clopton, Orchard Cook, Jacob Crowninshield, Richard Cutts, Samuel W. Dana, John Davenport, jr., John Dawson, Josiah Deane, Daniel M. Durell, William Ely, William Findley, James Fisk, Meshack Franklin, Barent Gardenier, Francis Gardner, Edwin Gray, Isaiah L. Green, John Harris, John Heister, William Helms, William Hoge, James Holland, David Holmes, Daniel Ilsley, Robert Jenkins, Richard M. Johnson, Thomas Kenan, William Kirkpatrick, Nehemiah Knight, John Lambert, Joseph Lewis, jr., Edward St. Loe Livermore, Nathaniel Macon, Robert Marion, William McCreery, William Milnor, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Jonathan O. Mosely, Gurdon S. Mumford, Thomas Newton, Wilson C. Nicholas, Timothy Pitkin, jr., Jno. Porter, John Pugh, Josiah Quincy, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Matthias Richards, Samuel Riker, Jno. Russell, Ebenezer Seaver, Dennis Smelt, John Smilie, Samuel Smith, Henry Southard, Richard Stanford, William Stedman, Clement Storer, Lewis B. Sturges, Peter Swart, John Taylor, David Thomas, Jno. Thomson, Jabez Upham, James I. Van Allen, Nicholas Van Dyke, Killian K. Van Rensselaer, Jesse Wharton

obert Whitehill, Alexander Wilson, and James Withrell.

NAYS—William A. Burwell, William Butler, Matiew Clay, Joseph Desha, Benjamin Howard, Edward loyd, John Love, Roger Nelson, Lemuel Sawyer, Jas. loan, Jedediah K. Smith, Abram Trigg, George M. roup, Archibald Van Horne, Marmaduke Williams, nd Richard Winn.

YAZOO LAND CLAIMS.

Mr. BACON presented to the House a memorial gned, by order and at the unanimous request of ne Legislature of the State of Massachusetts, by ames Sullivan, in his official capacity as Gover-or of the said State, praying the attention of the ational Government to the claim and rights of ndry citizens of the said State of Massachusetts, and to certain lands purchased under grants of ne State of Georgia, in the year one thousand even hundred and ninety-five, and that all obructions to an impartial investigation of their ghts may be removed, and that their claims may e adjusted by an equitable compromise, or that ich other relief may be afforded by Congress as hall seem just and proper.

Mr. BACON having moved that the memorial e referred to the Committee of Claims,

Mr. BIBB moved that it be rejected. He said here were very few cases in which he should ppose the reference of a petition; but this was a ise in which he should be in favor of rejection. e would never object to a petition for a lawful ject; but when a petition was laid before the ouse evidently founded in fraud and corruption, e should reject it. So much had been said on is subject heretofore, the fraud and villany of the ansaction on which the claim was founded had en so ably exposed, that he deemed it unnecesry to say anything more on the subject.

Mr. TROUP did not know whether the memoal should be thrown under the table, or whether, had been moved by his colleague, it should be jected. The memorial, on a subject on which e House had before decided, and that on the ost mature deliberation, was treating the House ith disrespect; it was an attempt (it could be nsidered in no other light) to tease the House; torture it into a compliance with the prayer of e petition. The House was to be provoked into surrender of important rights to get rid of the emorialists. They were bound to listen to a emorial couched in decent, proper and respectl terms, but not to the language of insult—and is was an insult upon this body, calling upon it sanction corruption so vile and infamous. With is impression he should second the motion of s colleague.

The SPEAKER declared a motion for a reference take preference of a motion to reject.

Mr. BIBB called for the yeas and nays on the otion for reference.

Mr. SMILIE said, as he should vote for the comitment of the petition, he should mention one ason that induced him to vote thus. His sentients on this subject were well known; he was Yazoo man. He never had, nor did he now, ean to vote in favor of the claim; but when a petition came before the House, through the medium of the Executive of a high and respectable State, he felt a delicacy in saying that such a petition should not be referred. The House had this session heard a great deal with respect to the rights of States; he hoped they would take no step which might infringe those rights. Though not in favor of this claim, yet, in the form in which it now came before the House, he hoped it would be referred.

Mr. LIVERMORE did not know whether he could well sit still and consent to give a silent vote on a question of this nature. If no objection had been made to this motion there would have been no occasion; but considering the question as it ought to be considered, it was astonishing to him that any objection should be made to a commitment. Here was a representation from the Legislature through the Executive of a State, to the Legislature of the United States. Now, whether the claim was well founded or not, he did conceive that there was more deference to be shown to a State, than instantly to throw its memorial under the table, or to reject it without debate. He did not conceive that this was the regular mode of doing business; he apprehended, notwithstanding what had been said by the gentleman from Georgia, that this question might and ought to be brought before the Legislature. Whatever views might have been taken by a former Legislature on the subject, had nothing to do with the present. He conceived that the present Legislature were not as well informed on the subject as might be supposed, for although there were present many members of a former Congress, there were also many new members. He by no means admitted the idea that the Legislature ought to grant the claim; but at the same time he did not contend, nor did it follow, that every subsequent Legislature should pursue the same course as the one preceding it, or never listen to a claim because it had been before rejected. He would not now undertake to enter into the merits of the claim—would not say he should vote for or against it: he was determined to hear every argument that should be adduced against granting relief to the memorialists; but it was at the same time his bounden duty to consider the petition of any portion of our citizens who considered themselves deprived of any rights. Without troubling the House with any further observations, he hoped they would refer this memorial, from a respect to the Legislature of the State by whom it was preferred.

Mr. W. ALSTON did not care what course was taken with this petition; whether it was rejected or not; but it seemed to him it would be as well to act somewhat consistently on this occasion. A great clamor had been raised a few days ago because the House neglected the petition of a parcel of merchants. Even their petition, such as it was, was not rejected; the right of petitioning was revered, and it was laid on the table. What was now before the House? A petition from one of the most respectable States in the Union, which after the most mature reflection had re-

quested the House to do—what? To grant the Yazoo country to speculators? No. It asked for its citizens a hearing. And yet they were told that this petition should not be committed, that no respect should be paid to the respectable source from which the memorial had proceeded, because the original ground of the claim was fraud. This might be true. That the Yazoo act was as corrupt a one as ever the statute book was disgraced with, he had no doubt; and he also believed that no man was more opposed to fraud and corruption than he had always been. It was from his great opposition and aversion to land jobbers and speculators, that he had been heretofore in favor of examining into this subject, and getting totally clear of it in the best manner they could.

The story of Yazoo had been so often resounded within these walls, that it had become, like the cry of wolf in the fable, repeated so often that it was no longer regarded. It should seem from the language in the House, that a part of it really designed to countenance fraud. This was not the case; there had been no question as yet proposed to the House to grant a single acre of land; such a proposition had never entered these walls. The only question was and has been, whether this claim should be settled on any principle, if narrowed down to the terms of the Convention of the State of Georgia.

He might be permitted while up to make a few observations on this convention. The subject of this grant of land was introduced into the convention, with the express view that Congress should do something with the grant; that they should take it into their hands, and rid the State of Georgia of it forever. Under this view it was that he had been led to vote for the convention, which he did not entirely like; but the subject had taken such a turn in Georgia, that the Representatives from that State wished to get clear of it, for it would always hang over them, until the United States should do something with it. Under these impressions had that convention been adopted. What is now our situation, said he? The Government of our country had passed a law appropriating a small portion of country for settling claims, among which this was recognised. Whether it was good policy or not to give these petitioners anything, was not a question now before the House. He thought the Government were not now bound in the same manner as they were immediately after the transaction took place.

Whatever mode were adopted to get rid of the claim, he should be satisfied. If a reference were to be made he would vote for a rejection. He had not about him those nice feelings which some gentlemen professed; for if a petition were not referred, he cared not what became of it. He should vote for a reference of this petition, as he did in other cases, to dispose of it finally in the shortest time. Gentlemen who were so liberal of professions of respect for the rights of petition at all times, might be able to account to their consciences for the rejection of this.

Mr. Nelson said, as he had the honor of seconding the motion for rejection, it might be expected that he should assign his reasons for so doing. It appeared to him that this question was so perfectly well understood in this House and throughout the United States, that, if there were no impropriety in rejecting a petition at this stage of the business, there could be no reason for a reference of this. The subject was perfectly understood; every gentleman had made up his mind on it, and he therefore saw no reason why the petition should be referred and go through the whole routine of business, when they meant finally to reject it. If there was a determination to reject it, could it not be done now as well as at any time? But the gentleman said, a petition coming from so respectable a State as Massachusetts, should be treated with attention. Mr. N. would listen to a petition coming from any State Legislature, but not sooner than to a petition coming from a number individuals. If the members composing the Legislature had petitioned in their individual capacity, he should conceive himself bound to pay the same respect to them. A majority of the people composing the Legislature of the State of Massachusetts, had thought that this claim was correct and ought to be granted. These persons imbibed their opinions from their constituents, who were perhaps very much interested in the claim. These men (the claimants) had tried the question here in various shapes. What further form could it assume? They thought if they could come forward under the sanction of a Legislature, they should be treated with more attention than if they had come forward in their individual capacity. If the House were prepared to reject their memorial, it would be no indignity offered to Massachusetts to reject it. Every State in the Union had a right to make such applications as she pleased; which might be referred or not. If Congress were not acquainted with the subject and facts stated in the memorial, it might be referred. But if they were already fully acquainted with it, where, in the name of common sense, was the necessity of referring it? If he should engage in any business to which he was not competent, but in which some man perfectly acquainted with it should give him the necessary information, he need not employ his time in receiving the same information from another source. In this case, then, there could be no more disrespect in rejecting this memorial, in this stage of the business, than at any time hereafter. It was said there were many new members in the House. In answer to this, he might say, that there was not a child of ten years old in the country who had not heard of this business—not a member in the House who had not understood the subject as well as ever he could; it had made a noise throughout the country, and every one had heard it, and must be prepared to vote on it. Gentlemen who were in favor of the claim would of course vote against its rejection; but they wanted no time to reflect on the subject. Their minds were fully made up, and they were ready to give their yea or nay on the subject.

The gentleman from North Carolina had endeavored to put this subject in a different point of view from that in which it generally appeared. The law of the country was open to these claimants, and because they and other men might think the forms of law too tedious, they had petitioned Congress to erect a more summary tribunal, that they might obtain a more speedy decision; that Congress should pass a resolution to authorize A, B, and C, to pass a law respecting land titles. We had better discharge all our judges, said Mr. N., and say we will have no courts, and whenever a question is to come on, application may be made to the National Legislature for the erection of a tribunal for its decision. This memorial prayed that Congress would pass a law for the purpose of giving the Yazoo people an opportunity of trying this question against the United States. If they wished the validity of their claim to be decided, let them bring an action of ejectment against any person settling on their land; if no person would settle on it, let them erect a house for the purpose. It was a new idea and an abominable principle that Congress should pass a special law for the purpose of trying a particular case. If the laws of the United States were deficient, let the general system be amended, but not legislate on any particular case.

For these reasons he should vote against the reference of this petition; because, in the first place, the House were as well prepared now as they could be at any time; because, in the second place, voting against it would be no sort of disrespect to the State of Massachusetts; because, in the third place, he believed it would be improper to pass a particular act, as the memorial prayed, for a particular case; and fourthly, because, he thought the particular transaction on which the claim was founded was abominable throughout. For these reasons he was prepared to vote against a reference.

Mr. HOLLAND rose to express his opinion that the petition should be referred to the Committee of Claims, or to some other; it was certainly one of those cases entitled to consideration, and he did not believe that the ears of the House would be insulted by listening to it. Perhaps the Legislature of Georgia in granting this land had acted as corruptly as the gentleman from that State had said it had. Had not this subsequently been a matter before the Commissioners of the United States, and had they not in some degree recognised this claim? Let the gentleman from Georgia examine and see whether the settlement of this claim had not been recognised by these Commissioners. Mr. H. did not recollect that this claim had ever been rejected at any time; and, let it be recollected, a bill had once passed the Senate of the United States authorizing a compromise of this claim.

After this had actually taken place, were the ears of gentlemen in the House so extremely delicate that they felt themselves insulted when such a memorial came before them?

The gentleman from Maryland had said, that school-boys knew the circumstances of the case, and that all must be ready to decide. Mr. H. said, this was not the case; this was a complex business, and would require more time to decide on it than that gentleman had devoted to it. The gentleman might ask another question, why was a particular law passed declaring that a particular class of citizens should not settle? It was certainly proper that their claim should be taken notice of, and particularly when the Legislature of a State had interfered on the subject. But the gentleman had said, that the State had given an easy ear to the claim of its citizens. Perhaps this was just. Mr. H. was one of those who thought the claim should have been long ago settled, and that no clamor should have been made about it; for he begged leave to say that nothing but clamor had been opposed to the claim; and gentlemen so much opposed to it had not examined into its justice. He believed policy as well as justice required its settlement; that its not being determined would prevent the Mississippi Territory from being peopled, and its citizens from settling. For who would settle it in its present situation? He hoped, therefore, that it would be referred and undergo a serious examination; and that gentlemen would not feel their ears insulted by a memorial couched in such respectful terms as this.

Mr. BACON said he felt himself incompetent to decide on this claim, and feeling so he had supposed that other gentlemen were in the same situation, especially as there was in this Congress so large a proportion of new members; but were he even competent, fully competent, to enter into an examination of it, he should feel it by no means his duty to enter into an investigation of it in the present stage of the business. When he presented this memorial, he did not apprehend that he should be under the necessity of making any observation; but, from the objections made to giving it the ordinary course, it might be expected that he should say something in favor of it. It was not necessary that he should at this time enter into a long dissertation on the right of petitioning. A few minutes ago, when, as a gentleman had said, the ink was scarcely cold with which the embargo law was written, they were called upon virtually to repeal it. What did they do with that petition? Though it contemplated a case which must have been within the view of the House when the law was passed, although it had an important bearing on foreign relations as well as domestic, the House had treated it with that respect which they were now required to deny to the State of Massachusetts. He should not enlarge upon this; perhaps his feelings might not permit him to do it. He hoped the House would consider the petition as coming from, (he would not say a respectable, it was unnecessary to say it,) but from a decent source, and that they would treat it with ordinary respect. If this memorial was to be treated out of the ordinary course, the burden of proof in favor of its rejection rested with its opponents, who had, indeed, given some reasons why it should be excepted

from the usual course, which it might be proper to notice.

The gentleman from Georgia (Mr. BIBB) had said, that the claims of these citizen memorialists were founded in fraud. Mr. B. would only say, that whatever fraud had been committed, the Legislature of Massachusetts had not been contaminated by it. Neither could it be laid at the door of the State of Massachusetts; she had no participation in it. It had been said that this memorial was an attempt to tease the House into an appropriation. He would ask, whether every member of the House was at this moment convinced, whether they had sufficient evidence to convince them, that it was founded in fraud? He himself had not this evidence, and thought the House had not, on which to say that this claim was so palpably unjust. They were told it was teasing the House. Mr. B. said, they had lately been told that the frequency of former applications was no reason against referring the same petition now. It had been asked, he recollected, a few days ago by a gentleman from Virginia, (Mr. RANDOLPH,) whether Oliver Pollock's petition should be turned out of the House because it had been so repeatedly referred? And this question would be well applied to the present case.

It had been said by the gentleman from Maryland, that the Legislature of Massachusetts had asked a new principle to be adopted; had asked them to give a different destination to the petition. Mr. B. would say this ought to be done. Was it not the introduction of new principles which gave rise to the present claim? The whole course of proceeding in this case had been novel; and new and extraordinary cases required extraordinary consideration. This was a sufficient answer to that charge.

Mr. B. protested against being driven into a consideration of the merits of the claim at this time; he was not, nor was the House now competent to discuss it. If the unanimous voice of the three branches of the Legislature of Massachusetts (concerning whose respectability he would say nothing) was to be rejected, if the door was to be slapped in their faces, it would be presumptuous in him to imagine that anything which he could advance should receive attention.

Mr. ELLIOT, Mr. TROUP, and Mr. SMILIE, rose at the same time. Mr. SMILIE gave way, and the SPEAKER declared Mr. ELLIOT entitled to the floor, as he had not been up on the question.

Mr. ELLIOT.—I knew that I was entitled to the floor, and that the Speaker would decide that I was so entitled, in preference to the gentleman from Georgia. The occurrences of every day, nay, of almost every moment of the present session, have evinced that it is the indispensable duty of this House to adopt some practicable construction of the provision of the Constitution of the United States which respects the right of petition. In the first amendatory article—and it ought to be deeply impressed upon the mind of every one that it was the expectation, the prospect of being able to obtain these amendments that induced a majority of the people to adopt the original Constitution—we read, "Congress shall make 'no law respecting an establishment of religion, or 'prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the 'right of the people peaceably to assemble and to 'petition the Government for a redress of grievances." And the tenth amendatory article is in these words: "The powers not delegated to the 'United States by the Constitution, nor prohibited 'by it to the States, are reserved to the States respectively or to the people." I know that men with whose information and talents I have no right to place my own in competition, are opposed to the Yazoo claim, as it is called; but in this number I am far, very far, from including the gentleman from Georgia. [Mr. TROUP called to order, and Mr. ELLIOT, on Mr. TROUP's taking the floor, retorted the call. The SPEAKER desired them both to sit down, and remarked that no observations of a personal nature could be in order.] Mr. ELLIOT again rose and proceeded. I had no idea, sir, of transgressing the rules of the House. Although I did not designate the particular member from Georgia to whom I alluded, every member of the House must have understood the allusion and the reason of it. When we were in conclave, not many days since, the gentleman from Georgia assailed me with the same remark, and it was not then pronounced out of order. [The SPEAKER said he was not then in the Chair.] I know it, sir. We were then in Committee of the Whole. The gentleman made an unprovoked attack upon me, and was not called to order by myself or any other member, still less did he call himself to order for the same remark which he now considers disorderly on my part, merely because I have retorted it upon himself. This statement of proceeding in conclave was necessary by way of explanation. The public eye was no then upon us, and the public could see no natura connexion between the debate of that day and this. But it is not my object, *in vulgum ambigua spargere voces*, on this or any other occasion. do not speak *ad captandum vulgus*, not to th crowd, unusually numerous and respectable as i is by which we are this day surrounded, but t the sober and solid sense of the wise and honor able Representatives of this great nation. An in closing this digression I beg leave to assur the other members from Georgia that I have high respect for them and for the State. To re turn to the subject. The Constitution has se cured to the people the right of petitioning th National Government; but of what consequenc is this right, if, according to the new-fangled nc tions which have been broached the present se sion, in relation to this Constitutional privileg you are under no obligation to receive and hea their petition. No, sir, it is unquestionably th true construction of the Constitution, that th people have a right to petition, and that it is ou duty to hear and consider their petitions. An the powers not delegated to the United States ar reserved to the States respectively, or to th people. The State of Massachusetts, to all intent and purposes, so far as it respects powers no

Constitutionally delegated to the General Government, remains a sovereign and independent State. Among the rights which it has not surrendered is that, indubitably, of memorializing the Government of the United States; and this they have now exercised—for the application before us, if not in form, is in substance a memorial from the constituted authorities of Massachusetts to those of the United States. Yet gentlemen talk of throwing it under the table! Why, sir, in the famous case of the memorial from Philadelphia, they did not seem disposed to go so far; those who opposed the reference were willing the petition should lie upon the table for consideration. Let me call the attention of gentlemen for one moment to the celebrated claim of Amelie de Beaumarchais, which the Government of this nation has so long declared to be unjust, but which the imperial power of the French empire declares to be just, and elevates its voice with a demand that we should pay it at all events. This remark is made, because I will venture to predict that in a very few days gentlemen will tell us that as France vouches for the justice of this claim, and has called upon us to pay it, pay it we must. Indeed, if the claim be in fact just, and we pertinaciously refuse to do justice, even to a solitary subject of France, that Power may, in time, be warranted in considering our denial cause of war. Upon the principles of the law of nations, Massachusetts, as a sovereign and independent State, within the sphere of those powers which are reserved to her by the Constitution, has the same right to demand of us to do justice to her citizens. From the nature of our Federal Union, that State cannot make war upon us to enforce the claim: but let me warn this Government against making war upon Massachusetts. To attempt to throw the constituted authorities of Massachusetts under your table, would be taking the bull by the horns with a vengeance. Grasp that State, with a view to trample it under your feet, and you will find that Hercules has a club, and can use it too; that the modern as well as the ancient Hercules is a hero. On this subject, I may be warm. I ought to be so. I am so. Whenever the idea is suggested of humbling my native State in dust and ashes, I will never restrain the ardent expression of the most ardent indignation.

But the old cry of "Yazoo" is raised against this memorial and its supporters. All are Yazoo speculators, of course. Will any one say that I am a Yazoo man? The farthest from it of any person in the world. Just as much interested in the land speculations that may be going on in the moon. Nor do I know one of my constituents who has the most remote interest in the question. But, will any one venture to charge the Legislative and Executive departments of the government of Massachusetts—the vote in the Legislature is stated by the Governor to have been unanimous—with being the patrons, still less the efficient agents of fraud and corruption? No; not for the world; but these wicked speculators have imposed on the easy sincerity and zeal for the rights of its citizens, of that respectable government. Gentlemen may rest assured that this subject is perfectly understood in the Eastern country. Those in that quarter who interested themselves in the Yazoo purchase had no reason to presume there was fraud in the case at all. Had they any *prima facie* evidence of fraud and corruption? Exactly the reverse: *Prima facie* evidence of an equitable and just title. A title sanctioned by all the solemnities with which the Government of an independent nation solemnizes all its grants. And, in looking over the names of the memorialists of the government of Massachusetts, I notice the names of men, against whom, in their own country, at least, no one would have dared to make an insinuation questioning the respectability of their characters—men, whose characters would not suffer by a comparison with the members of this House. But what has the great bugbear, "Yazoo," to do with the question? Nothing at all. Will you reject this application from the government of Massachusetts? No, sir, you will not reject it. It is a subject upon which high ground ought to be taken. I will take that high ground, and say, that this House dare not reject it without consideration. It dare not throw it under the table. It dare not, and it will not.

Mr. TROUP said, he did sincerely believe that the gentleman from Vermont (Mr. ELLIOT) was really, with all his pretensions to honesty, what he knew a majority of the Yazoo Legislature to be; and, with this observation, he would pass over——

[Mr. T. was here called to order by the SPEAKER.]

Mr. T. said he was extremely sorry that on this subject he should trouble the House—he felt at this time particularly disqualified. Was this business never to be finally disposed of? Did the claimants calculate their chances of success on the confidence, or rather on the audacity, with which they urged their claims? Was the justice of their claims to be estimated by the indefatigable assiduity with which they renewed their pretensions? and pretensions too which were audacious, unfounded, and insolent—originating in fraud and corruption—embellished with murder, perjury, and every species of enormity! He trusted there was virtue sufficient in this Assembly to treat the claimants with contempt. He flattered himself that the Legislature would not degrade itself by a compromise with speculation and corruption: he presumed the Capitol was not the place where speculators were to seek indemnity. If it were, they had better appropriate five or six millions of acres to these injured persons—to these miscalculators of profit and loss, or rather to these men ruined by the unsuccessful exercise of the arts of bribery and corruption. What did the memorialists demand? That this House should indemnify them for losses sustained by the act of Georgia. Would they do it on the broad principle of relieving all speculators in distress, or from the cession to the United States, by the State of Georgia, of the land in question? On the last principle, they would not presume to attempt it; for they knew that they had not the power. On this

account, he wished the memorial to be rejected. He was as much disposed as any gentleman on the floor to treat the State of Massachusetts with respect, as an integral part of the Union; but, he would ask, what right had the State of Massachusetts to interfere with an individual claim? None.

Mr. Elliot said, that he had done all that could be required of him, as a son of Massachusetts; to vindicate the character of her citizens; and if the members from that State could sit silent under the new attack that had been made upon them, he had no objection. But, as the gentleman from Georgia did not even yet appear to know him, he would talk to those that did know him. He never had—he never could have had—the thing was impossible—it was abhorrent to his nature—any interest whatever in the Yazoo speculation. And he repeated the declaration that he did not know one of his constituents, numerous as they were, who had any interest in it. There might be one, there might be two, there might be six, among sixty or seventy thousand people, but he did not know that there was a single one.

Mr. Smilie said it was unfortunate, that upon this subject and some others, they could not debate with that calmness always necessary for deliberation. He would suggest to the House the propriety of referring the petition before them. Let us, said Mr. S., consider the source from whence it comes; and I will be bold to say that there never was an instance in which the Congress of the United States has refused to pay attention to, and treat with delicacy, any communication from the government of a State; and it certainly is good policy alwas to treat them with respect. He recollected a circumstance which caused much discontent, and where, in his own opinion, the Legislature of Virginia was not treated by the Legislature of Massachusetts with that respect which was due to her; but the conduct of that Legislature was not, however, such as was now proposed to be adopted towards the State of Massachusetts. He alluded to a proposition from Virginia to Massachusetts to join in a petition for the repeal of the alien and sedition laws. In the Senate of Massachusetts it was committed, and a report made on it, that it was not such as comported with the dignity of that State or as was due to the State of Virginia. If the State of Virginia had been discontented then, what would the State of Massachusetts be, if treated in the manner which was proposed? Was this the day for scattering the brands of discord in this House and in the nation? Did they not know that times were pending in which it might be necessary for the General Government to call for aid from every State in the Union? If events should arrive, which were but too much expected, the State of Massachusetts was no inconsiderable part of the Union. Then, said he, in the name of God, let us treat that State with respect! Those members who have been in a former Congress may have their minds made up on the subject, but there are a great many members here who have never heard the subject agitated or debated on the floor of Congress, and ought to be allowed an opportunity of judging for themselves. I wish to preserve harmony. For Heaven's sake let *us* take no step to infringe it!

Mr. Randolph did not intend to have said anything upon this subject—indeed, he was in no condition to say much—but an observation of the gentleman from Pennsylvania, who had just sat down, called upon him for some explanation of the reasons which would govern his vote. Mr. R. thought that this question had been very improperly connected with State rights—rights which he would forever uphold. He could consider the representation of the Legislature of Massachusetts, through the Executive, in no other light than as the act of the individuals who had made it. What rights of the State of Massachusetts were involved in the subject? Was the matter in controversy between that State and the United States?—between Massachusetts and Georgia?—between Massachusetts and any foreign Power?—or between individuals, where the rights of Massachusetts as a State were drawn into question? Certainly not. Did this State come forward to show that the franchises of her citizens, secured to them by the Constitution, had been invaded? No man could pretend it. The Legislature of Massachusetts had then, he must say, unwisely thrown the great weight of her respectability into the scale of a private claim, and of the most odious nature too. If therefore the consideration, otherwise due to her, was impaired, it was by her own act. He could recognise in this act none of the rights and nothing of the dignity of a sovereign State, and should vote with as little hesitation against the petition, as if it were supported only by the same number of private individuals. And was this a denial of the sacred right of petition? Had not those claimants been repeatedly heard before that House?—their petitions received and discussed? Was not the House in possession of every fact material to a correct decision? And did it not become them to affirm the deliberate sentence passed at a former session?

The House had been warned against making this question a subject of division at this time. It had been the origin of the first, and he might almost say the last, schism in the Republican party. Nor was it matter of surprise that it should have been so. The opinions of men, never until then called into question—of the leading characters in the Administration—were for the first time thwarted and exposed. Swarms of expectant nabobs had been awakened from their golden dreams, and the patrimony of the people wrenched from their very grasp. Nor was it possible for the opponents of this measure to do justice to their cause without holding the mirror up to corruption, and compelling her to view her hideous and disgusting features. Heats and animosities the most virulent could not fail to grow out of such a discussion. The seeds of disunion were then for the first time sown amongst them. He defied any man to trace their divisions to a higher source; and he asked if it would not be better to bury the cause of them by giving the petition the most decisive and instantaneous rejection?

Mr. Bibb said, from some observations which

had been made, he deemed it his duty to say a few words more on this subject. When the memorial was read, he had thought it was not worthy of a place on their table, and he should have moved to have thrown it under the table, had he not understood that such a motion would not be in order. He would freely declare that it was his intention to treat the memorial with contempt, because he conceived that it deserved it. When a claim was brought before the House, founded in fraud and corruption unequalled in any age, it ought to be rejected. The gentleman from Massachusetts admitted that the State of Massachusetts knew nothing about the claim—never examined it at all—and yet the House were told, that in rejecting it, they would do violence to the feelings of a State. [Mr. BACON explained that he had not said anything to the purport of what had been just attributed to him.] Mr. B. said he had certainly understood the gentleman to say something like this.

The observation which Mr. B. had intended to make when he rose, was this: that if they permitted this petition to be committed, they indirectly acknowledged that this House had a right to legislate upon the subject. Now, he contended that Congress had no right to grant the prayer of the petition, and therefore had no right to refer it. The origin of the claim was well known, In the year 1795, the Legislature of Georgia, under the influence of bribery and corruption, passed a law giving a great number of acres of land, and which was repealed at the subsequent session of that Legislature. He believed he might say that this claim originated with the constituents of the gentleman who presented this memorial; if not, however, it was certainly known in the town of Boston, before it had been proposed to the Legislature of the State of Georgia. But the act of cession to the United States by the State of Georgia particularly stated what claims should be considered valid—amongst which claims, this could not be found. Now, as the State of Georgia had enumerated claims which should be granted, and this was not one of those, Congress had no right to grant the land in question. And it was the opinion of the State of Georgia, expressed by a late resolution of her Legislature, and which every gentleman might have seen in the National Intelligencer, within a few days, that Congress should not compromise the claim.

Mr. CHANDLER remarked, that he had understood the gentleman from Georgia, just sat down, to say that it was his object to treat the petition with contempt, and, if he understood him rightly, the petitioners also. The petitioners were no other than the Legislature of Massachusetts. Would the gentleman, indeed, treat them with contempt? For what? He had said that there was corruption in the way—that there was a claim of corruption. Did he mean to say the Legislature was corrupt? [Mr. BIBB declared that he did not impute corrupt motives to the Legislature.] Mr. C. continued: If the gentleman did not attribute to them corruption, why would he treat them with contempt? Why not suffer the memorial to take the common course? Why not permit it to be referred? Mr. C. said, he knew nothing about the justice of the claim. How far the Legislature of Georgia, who made the grant, might have been corrupt, or how far it deserved censure, let the gentleman from Georgia determine, for he would not undertake it; he hoped, however, that gentlemen would not attribute corruption to the Legislature of Massachusetts. As to these claimants having a share in corrupting the Legislature of Georgia, he knew nothing about it; but the memorial coming from at least a respectable source, he hoped it would receive the same attention as was given to every private petition couched in decent terms.

Mr. MARION said, he was one of those opposed to making any compromise with any claimants of lands; he should consider it a compromise of principle, not of policy; but, at the same time, he was disposed to treat any memorial, from a State Legislature, with respect. As the memorial stated, all the documents on the subject being already in possession of the House, he should suppose the House would be as competent to decide on it, in Committee of the Whole, as if it were previously sent to a select committee. Therefore, not wishing to treat the memorial with disrespect, he made a motion to refer it to a Committee of the Whole.

This motion, taking preference of the motion for commitment to a select committee; and the yeas and nays being called on it—

Mr. QUINCY lamented the passion which was displayed on this occasion, for, in truth, there were at present sufficient sources of irritation without this. He would not have risen at this time, as he was very little interested in the business, more than that he wished to perform what was his duty to his own State, but to defend a class of people, some of whom were his constituents. He wished the House to divest itself of prejudice, and take a clear view of the subject. He considered the memorial on the table, from the Legislature of Massachusetts, not as adopting the principle of the Yazoo claim, not as attempting to foreclose this House, in the exercise of its rights, but he considered it as presenting to this House the temper of the State; a temper and feeling, not excited by any fondness for individual speculation or aggrandizement, much less from any inclination to favor fraud or corruption; but from a perception of the ruin brought upon many individuals by this thing. Yes, ruin—fallen, not as gentlemen had asserted, upon great speculators; but, in many instances, upon humble individuals, who were induced to take part in this speculation, because they believed it honorable, and because they had confidence in the opinions of those who conducted it. The memorial on the table was not an expression of the sense of the Legislature of Massachusetts on the claim, but a wish from that Legislature, that the House would again recur to the subject, and see whether, on some principle of law or equity, indemnification might not be made. It had been very little in the intention of the Legislature of Massachusetts, or the citizens of Massachusetts, to deny that there had been

corruption in the original transaction; but it was a thing of which the Legislature of that State knew nothing. It happened at a distance of many hundred miles from them. All he could say was, that they were not participators in the fraud; and, notwithstanding the assertion of the gentleman from Georgia, that it originated in the town of Boston, Mr. Q. said he would place it on a different ground; that, if they had known it to be fraudulent, they would have abandoned and rejected it; this he could say, from his personal knowledge of the manner in which this transaction had originally been extended to the State of Massachusetts.

The gentleman from Virginia had observed, that the Legislature of Massachusetts had not shown that her citizens were deprived of any Constitutional right. Perhaps it would not have been proper for the State of Massachusetts to have alleged to this House that her citizens were aggrieved. It had been said that the title to this land might be tried; but, he said, a law, passed last session, had taken away all right which an individual could have to enter upon the land, and try his title to it; this was known to the Legislature at the time, and was the reason why they had referred the subject to this body, that the House might consider whether this law was Constitutional or not. So that, although the Legislature of Massachusetts had not specifically stated in their memorial, that any Constitutional right had been denied, every one knew that a law of this kind had been passed infringing the rights of some of her citizens.

With respect to the allegations of fraud and corruption, and the hints thrown out, that the Legislature of Massachusetts were at this time patronising fraud, he felt for the gentlemen who made it rather compassion than anything else. The House very well knew that the gentlemen were placed in a situation very unfortunate for a clear conception of this subject; because they were under the influence of passion prevailing in that State on a subject on which honest and wise men might well doubt. If it were true that there was original corruption, the Legislature of Massachusetts knew not of it; if there was not corruption, the assertion fell, of course.

It was peculiarly important that this subject should be treated with some degree of attention. It was unquestionably the prevalent opinion in Massachusetts, on this subject, which had excited so much attention, and in which the people felt an unusal interest, that some mode of law or equity could be devised, by which justice, in some shape, could be awarded to the claimants. This sentiment was universal, as far as he knew; and it was well known that those gentlemen who originally brought this land for sale into the Northern States were gentlemen from the Southward; and the petitioners rested their claim upon the foundation that, at the time they purchased these lands, they were ignorant of any corruption or fraud with which the claim was connected.

It had not been his intention to have spoken on this subject, but that it had appeared to him, after what had fallen from the gentleman from Georgia, it became his duty to urge to the House the propriety of paying such attention to the memorial of the State of Massachusetts, by a reference, as was due to every petition; after which, the memorial might be considered, on such principles as justice and policy might dictate.

Mr. Macon, himself, had no objection to the reference of the petition. The feelings of the people of Massachusetts and Georgia ought alike to be considered. He had no objection to hear the claim discussed again and again, although he never should consent, so long as he possessed his common faculties, to compromise the claim, or give one cent to the claimants. The law was as much open to these people as any other in the United States; whenever the United States sold any part of it, they had a right to try their title to it by law. Notwithstanding this, he had no objection to commit the memorial to a Committee of the Whole; there needed no statement of facts on this question; they had been stated over and over again. He wished a commitment, not because he was favorable to the claim, but because he wished it to be investigated again and again. If he could be convinced that they had a just claim, he should vote in their favor.

With the gentleman from Pennsylvania, he regretted that anything should be thrown in to divide the House at this time. Unquestionably, this lay at the door of those who brought it forward, whom he did not mean to blame, for they had a right, and it might be their duty so to do. As to sending it to a select committee, he could not see any purpose to be answered by it. Committees had reported, and facts had been stated, almost every year, since 1796. What more was wanting? There was no dispute about the facts; he never heard anybody deny that the Legislature of Georgia, which passed the law, was corrupt; no person had denied it; and on this, the whole claim turned. That the Legislature of Georgia had been corrupted, and that the corruption had spread into some of the large towns, he did believe. He should vote, as he stated before, for a commitment to a Committee of the Whole; although he should certainly have voted against its reference to any committee to report.

Mr. Crowninshield said he rose with reluctance at this time, and should not have risen at all, had not the debate taken the course which it had. The respectable State of Massachusetts, inferior to none in the Union, had asked of this body, respectfully, too, to hear and decide upon claims of her citizens; she had asked them to hear the petition of her citizens by a memorial which was unanimously agreed to by both branches of the Legislature, and this had been proposed to be rejected by two gentlemen from Georgia. Would any member from the State of Massachusetts have proposed this course with regard to a memorial from the State of Georgia? Surely not. He regretted that this business had been brought before the House at this crisis. Without giving an opinion in favor of or against the claim or prayer, he would rather have referred it to a standing committee, because, if referred to a Committee of

the Whole, it might be brought up to-day or to-morrow, and would agitate the public mind at this time. On the Philadelphia memorial, he had voted that it should lie on the table, and not for its rejection. He never would vote to reject a petition coming from a respectable portion of citizens at any time, when couched in decent and respectful language. Some gentlemen had gone into the merits of the question, which was improper at this time; but as it had been touched, he would observe, that the Legislature of Georgia, in the year 1795, agreed to sell a portion of her territory to a portion of her citizens—corruptly it was said. In 1797, a succeeding Legislature declared the act of their predecessors null and void. Mr. C. did not object to this; in doing it they had exercised a sovereign authority and their right. Another Legislature authorized Commissioners to compromise the claim; before which could take place the land was ceded to the United States. If a compromise had been contemplated by Georgia, would it be dishonorable in the United States to allow these claims? He did not wish to say a single word on the merits of this claim, whether it was just or unjust; but the fraud was not in Massachusetts. If fraud had existed in the transaction, it was elsewhere. The speculation did not originate in Boston, or in any part of Massachusetts, but at a greater distance. The agents of the Georgia Association came into Massachusetts with their deed of cession in their hands. The citizens of Massachusetts believed the title to be good—they purchased, and were deceived. They lost a million of dollars, and those who could not pay were sent to jail. Such was the case in Massachusetts. The purchasers were, he believed, all ignorant of the fraud; possibly some might have known it, and therefore he would be perfectly willing to say by a compromise that no person directly or indirectly concerned in the original fraud should share any portion of these five millions of acres.

Mr. C. asked pardon of the House for deviating from the course which he had proposed to himself when he rose. He did not mean to enter into a discussion; it was an unpleasant theme, and had ever produced great irritation. One expression, however, had been dropped, which he could not agree to—that this subject had been the cause of a schism in the Republican party. Mr. C. said he knew of no such schism. He had been a member of this House for four years, and had never heard that this subject was a cause of division in the Republican party; it never had been so considered, and he hoped it would not now. Are we not here, said he, legislating on a subject which cannot affect the politics of the nation? We stand on equal grounds as members of the Union of these States; let us act honorably towards each other, and not attribute to one another improper bias. I pledge myself that I never will willingly, and hope if I do I shall be ready to retract, descend to personality within these walls. For God's sake let us unite. Let no consideration divide us on the great subject which brought us together. Let the Yazoo speculation sleep. Let it lie on the table, or take it up and instantly decide it. The House will never hear a murmur of discontent from me if the petition be rejected. Let us do nothing which shall wound the feelings of any gentleman present. Let us do all we can for the good of our country. The crisis is perilous. We are threatened with war, and I fear we shall have it unless we rally round our rights, and let no consideration sever us!

Mr. LIVERMORE did not conceive that this was a question which ought to excite any animosity; neither did he understand what was said about a schism among the Republicans. All he knew was, that these memorialists were many of them of different politics from himself, and that the Legislature differed with him in political sentiments; but why that should be any reason for opposing this claim, or for treating it with disrespect, was to him inexplicable. As to the real merits of the question now before the House, whether this should go to a Committee of the Whole House or to some other committee, it was very evident that a respect was due to the memorialists and to the sovereignty of a State. There was another suggestion which merited some reply—that this was a claim founded in fraud. He apprehended that the gentleman from Georgia had not an idea that the present petitioners had any connexion with fraud. Mr. L. said he had heard a great deal of fraudulent transactions in the Legislature of Georgia in relation to a certain act, which participation of fraud was receded from by a repeal of that act. He knew nothing of it from his own knowledge, merely having heard so; but that these gentlemen claimants were implicated in the fraud he did not know nor did he believe. Whether the claimants were Republicans, or called by a different name, he did not know; this was a plain matter of right, and the justice or injustice of the claim was the only consideration which should influence gentlemen in voting on this question. If he understood the motion now under consideration, it was for reference to a Committee of the Whole, to enter into a dispassionate investigation; and a most violent objection was made to this. Was there indeed so great an objection to the truth? Was it so terrific that they were afraid of it? For all that was required was, to hear arguments to show on which side the truth lay.

One word more. It had been said by a gentleman for whom he had a high respect, but who was perhaps not always right, that the Legislature had no right to send this memorial, though at the same time he allowed that it should be treated with respect. It had been said, also, that they were entitled to no more respect than if they had sent it as individuals. Mr. L. conceived that, whenever the Legislature of any State thought that any portion of their citizens were oppressed by any particular act of Congress, they had a right to express that sentiment. It was not now proposed to the House to grant the claim; all that was requested was, that the House should receive the petition and enter into a consideration of it. This was not the time to discuss the merits of the

claim. Had he conceived that a discussion was to have taken place, he should have come forward prepared for it.

Mr. Smilie said it was immaterial to him how this petition was committed; but he rose to give his opinion on a remark made by the gentleman from Virginia (Mr. Randolph) as to a schism in the Republican party. Mr. S. said he had known no schism in that party till the first session of the ninth Congress, and every gentleman who was then in Congress would testify to the truth of what he was about to say. This schism then arose in a discussion of the measures proper to be pursued by this nation in relation to Spain and in relation to Great Britain. This was its source; and in this case, said Mr. S., the party in Congress which is called Federal, thought differently from me, and some Republicans chose to think with them. This was the schism, and the only cause of it; and the Yazoo claim has never influenced a single vote for a member of any State Legislature or of Congress, that I have heard of.

Mr. Taylor said he was as decidedly opposed to the Yazoo claim as the gentleman from Georgia or any other gentleman could be; but he had laid it down as a general rule to vote for the reference of every petition, and he should abide by it.

Mr. Cook said that the impression on his mind was directly opposite to that expressed by the gentleman from S. Carolina, who had just sat down. He should vote for a reference because he was not acquainted with the merits of the question. He had been in favor of a reference at former sessions from the same cause, and he presumed that one-half of the members present were in the same situation with himself.

Mr. Alexander said he should give his decided negative to the reference, in any shape. This memorial from the Legislature requested the General Government to consider a claim from a particular set of men, which claim had been often before the House discussed over and over again. Therefore, in voting against a reference to any committee, he should not conceive himself as showing disrespect to the sovereignty of any State whatever. He would wish it to lie on the table; for, however disagreeable a petition might be, he had never heard of its being thrown under the table. He conceived that the claim derived no additional solemnity from the manner in which it was introduced, although he had as high a respect for the State of Massachusetts as for any State in the Union.

The question having been put on the reference of the memorial to a Committee of the Whole, was decided in the affirmative—yeas 71, nays 37, as follows:

Yeas—Willis Alston, jr., Ezekiel Bacon, David Bard, Joseph Barker, William Blackledge, John Boyle, Peter Carlton, Ephaproditus Champion, John Chandler, Martin Chittenden, John Clopton, Orchard Cook, Jacob Crowninshield, Richard Cutts, Samuel W. Dana, John Davenport, jr., Josiah Deane, Daniel M. Durell, James Elliot, William Ely, William Findley, Francis Gardner, Isaiah L. Green, John Harris, John Heister, William Helms, William Hoge, James Holland, Benjamin Howard, Reuben Humphreys, Daniel Ilsley, Robert, Jenkins, Richard M. Johnson, William Kirkpatrick, John Lambert, Edward St. Loe Livermore, Nathaniel Macon, Robert Marion, William McCreery, William Milnor, Thomas Moore, Jeremiah Morrow, Jonathan O. Mosely, Gurdon S. Mumford, Timothy Pitkin, jr., John Pugh, Josiah Quincy, John Rea of Pennsylvania, Matthias Richards, John Russell, Ebenezer, Seaver, James Sloan, John Smilie, Jedediah K. Smith, Henry Stedman, Clement Storer, Lewis B. Sturges, Peter Swart, Samuel Taggart, John Taylor, David Thomas, John Thompson, Jabez Upham, James I. Van Allen, Nicholas Van Dyke, Killian K. Van Rensselaer, Robert Whitehill, Isaac Wilbour, Marmaduke Williams, and James Witherell.

Nays—Evan Alexander, Burwell Bassett, William W. Bibb, Thomas Blount, Robert Brown, William A. Burwell William Butler, Joseph Calhoun, Matthew Clay, Howell Cobb, John Dawson, Joseph Desha, Meshack Franklin, Barent Gardenier, Edwin Gray, David Holmes, Walter Jones, Thomas Kenan, Edward Lloyd, John Love, Josiah Masters, Nicholas R. Moore, Roger Nelson, Thomas Newton, Wilson C. Nicholas, John Randolph, Jacob Richards, Samuel Riker, Dennis Smelt, Samuel Smith, Richard Stanford, Abram Trigg, George M. Troup, Archibald Van Horne, Jesse Wharton, Alexander Wilson, and Richard Winn.

A motion was made by Mr. Newton, that it be the order of the day for the first of June next; and, on the question being put thereon, it passed in the negative.

Another motion was then made by Mr. Trigg, that it be the order of the day for the first of May next; and, the question being put thereupon, it passed in the negative—yeas 41, nays 66.

Another motion was then made by Mr. Milnor, and the question being put, that it be the order of the day for the second Monday in February next, it was resolved in the affirmative.

Tuesday, January 5.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act supplementary to an act, entitled 'An act for fortifying the ports and harbors of the United States, and for building gun-boats,'" with two amendments; to which they desire the concurrence of this House. The Senate have also passed the bill, entitled "An act extending the right of suffrage in the Mississippi Territory, and for other purposes, with several amendments; to which they desire the concurrence of this House.

GENERAL WILKINSON.

Mr. Randolph said he was afraid that the motion which he made a few days ago, and which he wished yesterday to have considered, was not intended to be decided upon. When he had first made the motion, a very prevalent opinion seemed to exist, and it was expressed by one gentleman particularly, that he hoped it would be forthwith and unanimously agreed to; the same gentleman on the same day had moved to postpone its further consideration till yesterday; and yesterday its consideration was evaded. Mr. R. asked whether this could be considered as candid treatment?

He knew that it had been said, upon this floor that the right of the House to make such inquiry and enter upon such matters at all was extremely questionable. But, did not the Constitution of the United States enjoin upon its citizens that they should not accept of any title of nobility from any foreign Prince or Power? And did not the same Constitution enjoin that the persons holding authority under this Government should not accept of any present, even of a complimentary nature, from any foreign Prince or Power without the consent of Congress? And if persons holding high authority under this Government were found to be, or if there were reasonable ground on which to believe they were in the habit of receiving money unconstitutionally from foreign States, he would ask the House where this matter was to be taken up?

[The SPEAKER here interrupted Mr. R., declaring that he was out of order, as the subject was not yet before the House.]

The House now agreeing to take up the resolution for consideration, the SPEAKER stated that, when the subject was last considered, a motion had been made by Mr. GARDENIER to refer it to a select committee, "with power to send for persons, papers," &c.; that a motion had also been made by Mr. MARION, and was now under consideration, to strike out the clause of the preceding motion, which is quoted, on which the yeas and nays had been required.

Mr. LYON said, he was among the first who thought it proper to send the information presented to this House by the gentleman from Virginia, (Mr. RANDOLPH) on this subject, to the President of the United States. He felt at that time neither delicacy nor repugnance in calling on the Executive to investigate the conduct of General Wilkinson; he then considered that a certain duty attached to him, which duty he was anxious to perform promptly, and without delay. It had been said, that the gentleman from Virginia ought to have sent the information he had given to the House to the President as soon as it came to his knowledge; but he had chosen to give this House the information, and to send it through that channel to the President, with the opinion of this House, of the necessity of an investigation. I felt, said Mr. L., that the same duty attached to me and to every member of this House, immediately on receiving this information, which some gentlemen seemed to consider to be the duty of the gentleman from Virginia, to send the information to the President. I was not at that time so anxious as to the manner of doing the thing as to act promptly. This business had been protracted by what he had considered unnecessary debate. He had yesterday received authentic information that General Wilkinson applied to the Executive for an inquiry into his official conduct in general terms, when he first arrived at the seat of Government; that he had repeated that application within a few days, and a court of inquiry was appointed to sit in a few days, who were empowered to examine and inquire into the conduct of the Commander-in-Chief of the Army, on as general principles as could be wished for. He was confident that, in directing and appointing this court, the Executive of this country had done its duty. He had confidence in the officers appointed. The information and the papers which had been read by the gentleman from Virginia, if he condescended to lay them on the Clerk's table, could be sent to that court; no doubt the court would call for this and every information and testimony in the power of that House, as well as from every other quarter.

All that he wished at the outset of this business was like to be effected without the original resolution, or any of the subsequent motions. He should, therefore, vote against the whole. He could not answer it to himself to call on the President of the United States to do a duty which he knew he had done. He wished, therefore, to get rid of this resolution altogether. The Executive were proceeding in the course of their duties. The House had business of the highest importance to the nation to attend to—legislative business. Let us, said he, proceed with our duties while the Executive are proceeding in theirs; in this way we will be best able to answer for our own conduct to our constituents.

Mr. THOMAS hoped the gentleman who made the motion now under consideration, would withdraw it, in order to save time. The House could then disagree to the original motion for reference, and to the resolution.

Mr. GEORGE W. CAMPBELL said, for his part, he considered the question now before them one of very considerable delicacy. He did conceive, when the House took up the examination of a new question, that they ought to examine whether or not they were going out of their province. He did not know that this House could act in any other capacity than legislative, except in the single instance of prosecuting in cases of impeachment, which power the House possessed; and when such a subject came before them, they could take such measures as they chose to procure evidence to support the charge which they might make; but he was not satisfied that, in any other case, the House could erect itself into a tribunal to collect evidence. He believed it was admitted that the present case was not cognizable by the House, as civil officers were alone impeachable by this body. Should they then appoint a committee to collect testimony relative to the conduct of any military officer? He would ask what use could be made of the testimony, when collected? He would ask what had the House to do with the commission of the crimes of murder or treason, or other crimes of which they had not cognizance? The House would go out of its province to collect evidence on any case in which it could not act. In collecting this evidence they would not act in a legislative capacity. If not acting in a legislative capacity, or on an impeachment, (the only other case in which they could act,) in what character did they act in appointing a committee to collect testimony? He did hope that the House would not erect a new principle; at the same time, he wished it to be distinctly understood, that he

was in favor of an inquiry, as much as any man in the House. Gentlemen had taken the liberty to express their impressions on this subject; he did not feel himself at liberty to express his opinion. It would not be said that he had any particular partiality to that officer; but, at the same time, would not do anything to exclude a fair and impartial investigation of his character.

If evidence on this subject were laid before the House, they might, in his view, with propriety, order that evidence to be transmitted to the Executive department. In doing this they would do their duty; and, by doing it, would sufficiently express an opinion not only that an inquiry was necessary, but that the proper department would make it. He could not conceive that it was proper for them to give, in this manner, a specific direction to the President; because it would be saying that they thought it was necessary to stimulate him to do his duty. It was understood that the evidence which had been adduced in this case had not been laid before the court or grand jury at Richmond, and that the Executive had not possessed it; there was no reason, therefore, to believe that the Executive had neglected its duty; and it would be going too far to tell the President that he should do his duty, when he had not neglected it. Had it appeared that he had neglected his duty, it might have become a question whether the House should express an opinion as to the propriety or necessity of an inquiry. If the House should, even after discovering that the proper department had been negligent of its duty, express an opinion as to the necessity of an inquiry, they would, in his view, go full as far as (if not farther than) they could be constitutionally warranted in going. He would not say whether such an opinion should or should not be expressed; but till some reason were shown to justify an opinion that the proper department had been deficient in its duty, he could not see the propriety of the House taking any step to stimulate it to an inquiry.

It had already been said that a court of inquiry had been appointed. Were that the case, and he did not doubt the fact, it would seem to him altogether improper for the House to act on this subject at present, if they had the power. He did think it important that the House should keep strictly within the pale of its jurisdiction, and act within its Constitutional province; for the Constitution had provided limits to this House as well as to other departments of Government. He conceived they had no more right to infringe on the province of the Executive in its executive capacity, than the Executive had to interfere with the Legislature; each should keep within its proper sphere; and, from all the consideration he had given this motion, he could not perceive any authority in the possession of the House to give a direction to the Executive on the subject.

The only ground on which they could even send papers to the Executive on this occasion was, that the Constitution did prohibit any officer of the United States from receiving a sum of money from any foreign Prince or Power. Now, as the evidence which had been read to them did appear calculated to prove that a sum of money had been received by the officer who was the subject of this resolution, he thought it would be perfectly proper to send the evidence. He would again state, and wished it to be distinctly understood, that he was one of the last who would prevent a full investigation on this subject; he wished it was in his power to hasten it, but it was not. He had always conceived that an examination of this kind was essential to establish the character of the officer involved, and to say that he was or was not worthy of his trust; and he had supposed and did still believe, that it had been hitherto withheld only from the effects which it might have upon other trials now pending. Being of this opinion, if the gentleman from Virginia would put the House in possession of the papers, he would move the following order:

"*Ordered*, That the documents laid before this House relative to the conduct of General James Wilkinson be transmitted to the Executive of the United States."

With respect to the motion at present under consideration, he was certainly opposed to giving the power of collecting testimony to the committee, and to the reference to the committee proposed to be appointed; because such testimony could be of no more purpose than if three, five, or seven men out of doors had performed that duty; and because it would be going a step further than propriety would warrant, to give authority to a committee to collect testimony of which the House could make no use whatever. Under these impressions, he should vote for striking out these words, and trusted the modification which he had suggested would take place. The transmission of the papers would give to the public and to the Executive the opinion of the House as fully as if expressed in any other way, and might furnish the Executive with information which it did not now possess.

Mr. Stanford said, this doctrine that mere resolutions of request to the Executive were unconstitutional was new, and one, indeed, to which he could not subscribe. He well recollected that, in the fifth Congress, perhaps the last session of it, a resolution was introduced, which gave rise to a famous debate, requesting the President to institute a new mission to France, the first having failed of success; and that then it was not opposed on the ground of Constitutional difficulty. A mere resolution of request was no exercise of authority. It had till now, he believed, been the practice of every session, and, to his recollection, had not before been scrupled as to its propriety. In the Constitution it was expressly provided that no person holding an office of profit or trust under the United States, should, without the consent of the Congress, accept of any emolument, or present from any King, Prince, or foreign State; and notwithstanding this provision, they were told that the commander of our army being a military and not a civil officer, it belonged solely to the Executive to take his own course with that class of officers. He thought otherwise, and that this clause of the Constitution fully warranted the in-

quiry contemplated on the part of this House, and that if it should be found that the officer in question had been in the receipt of large sums of money, as alleged, from a foreign State, and that without the consent of Congress, it was time the House felt some jealousy on the score of their own privileges, and that some step should be taken to check such encroachments. The alarm made, that they might seem to encroach by this inquiry upon the Executive functions, had once before, he recollected, been carried in a like extreme, and gave occasion to pass the noted law, called the Logan law, in order to guard those functions. He could see no reason why they should not be equally concerned for legislative prerogative, and take some step to guard them as well as Executive prerogative.

Mr. S. concluded by asking, if it would be in order to move a preamble by way of amendment, to the present motion?

The SPEAKER replied, that it would not, as the motion now under consideration was for reference.

Mr. MILNOR felt great doubts as to the propriety of proceeding on the resolution itself, and still greater of referring it, as was proposed, with power to send for persons and papers. If they were about to try General Wilkinson, if he was to be brought to the bar of the House, and his guilt or innocence was to be there determined, Mr. M. should be willing to appoint a committee to send for persons, papers, &c., to act as a grand jury, and inquire whether there were a sufficient degree of guilt to warrant a trial. But, as he believed the House had no right to call General Wilkinson before them, he had no idea of proceeding in this way to collect evidence when they had no authority to act upon it. It had been said that a court of inquiry had been called. Mr. M. had heard himself, and had reason to believe the information was correct, that an inquiry had been asked for, and ordered. If so, was it proper that the House should go into the subject? Was it right, when a court of inquiry was called, when every evidence would be sought for on this and every other charge brought before the court, that the House should endeavor, in an *ex parte* manner, to ascertain the guilt or innocence of any person about to be tried by the proper tribunal? It was extremely improper to go into any inquiry on the subject. If, when the gentleman from Virginia brought his resolution forward, he had laid the papers he had read on the table, he should have had no hesitation in voting that they should be transmitted to the Executive, and should have voted for a motion to that effect, because he believed that when any information came before the House with respect to the conduct of any officer, it should be laid before the proper authority. But a positive declaration of the House that inquest ought to be held on the conduct of any officer would convey to the public mind and to the court a strong impression of his guilt; and this would be giving an undue influence in an inquiry.

Believing that it would be improper in the House to investigate the subject, or to influence an inquiry by virtually saying that he believed General Wilkinson to be guilty, he hoped the present motion would be agreed to, and afterward that they would decide against the reference. He had no hesitation in saying, it would be improper to constitute any committee or court of inquiry on this subject, and under this impression should vote.

Mr. GARDENIER was somewhat surprised at the opposition which the motion he had made had met with, and was also surprised that the propriety of pursuing the course which he had recommended (to appoint a committee of investigation) had not struck gentlemen more forcibly than it had. He was therefore reduced to the necessity of stating the reasons which induced him to make the motion, and which now compelled him to persist in it. The charge brought against General Wilkinson was calculated not only to occupy the attention of the House, but of the whole American people. Whether they considered that he was an officer no less than Commander-in-Chief of the Army of the United States; whether they considered that department of Government by which he had hitherto been protected and cherished, no less than the Executive; whether they considered that this charge was no less than against a General or Commander-in-Chief for bargaining and selling himself, his army, and his country to a foreign or a hostile Power; whether they considered the time when this accusation was brought forward, a time when the destiny of the nation, its slavery on one hand and its liberty on the other, depended not on the capacity alone, but, dreadful to say, on the fidelity of the Commander-in-Chief; when they considered to whom this charge was submitted—to the grand inquest of the nation—that body whose duty it was to watch with unceasing vigilance the safety of the Commonwealth, to use the language of an ancient writer—*ne quid Respublica detrimenti capiat*—in whatever way they considered it, its decision required assuredly all the wisdom, all the patriotism, and, he would add, all the independence of this body.

The original resolution of the gentleman from Virginia had been met at its threshold by an objection, the more surprising as it proceeded from those who had hitherto affected an exclusive and almost hysteric jealousy of Executive power—to his mind an objection more to be execrated, as it struck at the very root of Republican Government; as it went to deprive those of the right of instituting an inquiry into the conduct of an officer, who possessed the right of impeaching the President himself, who appointed that officer. The lesser power was included in the greater. If they had power over the master of General Wilkinson; if they were master over the superior, they were master of the servant also. He could never reprobate in terms of sufficient abhorrence, the position assumed, that this House was the only body which could not lay a request before the President. When he had seen the President of the United States benignly receiving addresses

from the Legislatures of different States (he could not say with smiles) requesting him to extend his paternal and affectionate care over the country for another Constitutional period, from bodies who had no Constitutional power to make this request, he could not believe that the President would show less attention to a request from this body than he had shown a disposition to do to requests from the Legislatures of particular States.

On a question of this kind, he could not condescend to reason. It was too plain, palpable almost to the sense, that this inquiry was within the limits of their Constitutional power. There could be no question that the House possessed a right to lay a request before the President; a right which was possessed by the meanest individual in society. It only then remained for the House to determine whether they would act upon this subject, so important in every point of view—after a deaf ear had been turned to this accusation in the Palace, it remained for them to say whether they would suffer venality and corruption to run through this body unhurt. He hoped never to see that day when the House would so much disgrace itself as to refuse to do what became a duty. If documents submitted to the House by the gentleman from Virginia were authentic, if these documents spoke the truth, there could be no hesitation in saying that a continuance of General Wilkinson at the head of the American Army, was not only disgraceful to the nation, but inconsistent with its security. If it were true that the gentleman from Orleans Territory had it in his power to give evidence still more convincing than any that could be found in the documents which had been submitted by the gentleman from Virginia, and Mr. G. had much reason to believe, and, indeed, had no doubt that the gentleman had it in his power, it would be proper to obtain that evidence; and if the course had been pursued as stated (and he did not question the fact) to institute a committee before the proceedings of the House had terminated on the subject, an inquiry to be carried on by persons possessing no such power as that now proposed to be delegated to a committee, (to send for persons, papers, &c.,) and if the gentleman from Orleans persisted in his word, as he always did, this inquiry would appear, if not intended, at least calculated to mislead. For, as he understood it, this committee, this board of officers, this trio of the President's, had not the power, if authorized to pursue the inquiry to the utmost extent that the nature of the case demanded, to enforce their process; they were a substitute for the reality, a mere make-believe. It was, therefore, that he was not to be taken in by this; it was, therefore, that he was bound to do his duty to his country by persisting in an investigation; that, at least, if he could not satisfy the Executive, he might satisfy the American people; for when its nature was known, the calamity would not be so great.

This disposition for inquiry seemed to be manifested on all sides of the House. They wished to ascertain, with unerring certainty, whether this charge was true or not. If the mode which they were now told, on what authority he did not know, was pursued by the Government; if that mode would not reach the object which was now aimed at, why refuse to delegate this power to a committee? This measure of appointing a court of inquiry was not communicated to the House officially, as it ought to be, in order to stop their proceedings, nor in such a way that they could place confidence in it; not meaning, at the same time, any disrespect to the gentleman from Kentucky, who stated the circumstance. It was sufficient for Mr. G., that such a court was not competent; and here he pledged himself, as upon a rock from which he would not be removed, that it was not in the power, if it was in the disposition, of the President, from his own authority, to go on with an inquiry of this sort, except the House gave him the authority on which to support it. He did not know whether the President had the power to compel the attendance of witnesses, except in cases of military matters and military men. How, then, was the evidence of the gentleman from Orleans to be got at? How, but by the intervention of the great Constitutional power of this House—the only way? If, then, those gentlemen were sincere, who wished to give General Wilkinson an opportunity of showing his innocence, or those who doubted it, and wished to have an opportunity of, giving evidence of his guilt, the mode which he proposed was the only one; if not the only, assuredly the most proper way.

What was the accusation? Not for an overt act or crime; not for an offence committed in the face of day, or which was capable of open proof. The crime was secret, if committed at all. The very nature of the act, being done in secret, carefully avoiding public attention, acting with such precaution as not to permit his name to be written or spoken, required a particular mode of proceeding. There was no other mode which would give satisfaction to the people of this country than a candid, fair, impartial, and unprejudiced investigation. If General Wilkinson could walk, unhurt, through the flames of such an ordeal, he deserved the confidence of the people; if not, it became the duty of the House to inquire further.

It had been said by some, that the papers read by the gentleman from Virginia, should be sent to the Executive; but nothing had been said about the gentleman from Orleans. He would ask the gentleman from Tennessee, why would he send these papers to the Executive? As what? He should suppose, as evidence which the President was to communicate to the board of inquiry which had been instituted. If the gentleman considered it proper, that any evidence should be sent, why not send the whole of the evidence, which it was in the power of this House to acquire? If they sent any, why not send all? And if they would send all, why not take measures without which they could not procure it? It did strike him, that the thing admitted of no other course; that, if they sent any, they should send the whole. He would, in this case particularly, if there were the most distant prospect of being

able to accomplish the object sought for, place before the President such evidence as could not be resisted.

The gentleman from Tennessee was pleased to remark, that the House had no more business with this inquiry, than the President of the United States had to recommend any act which exclusively pertained to the House of Representatives of the United States. He did not know what he might call the peculiar province of the President; but he knew that it was the peculiar province of the House of Representatives to originate impeachments, and yet, he had seen in the Message from the President to the House, an implied recommendation to them on that subject. He did not object to this; he thought the different branches of Government did well to sustain each other in all events. The President, said he, has given us an evidence that he thinks himself competent to advise us; and I really wish to be equally civil, and return him the compliment; to show him that we can advise him, and give him the means of acting efficiently. It was in this way that the House would effectually perform its duty. He wanted no half measures; they had appropriated money for half-fortification this session; he wanted no half-way inquiry into the conduct of the Commander-in-Chief, for this half-way business would not answer.

The power of the House to do this was unquestioned; it had exercised that power in a variety of cases. The only question was, whether this was one of those cases in which the House should exercise that power? Was this the only mode in which they could convict General Wilkinson, if he was guilty, or satisfy the community of his innocence, if he were not guilty? If this were the case, he thought friends and enemies should take this plain course; this was the object, and the only object, they ought to pursue. Mr. G. was not influenced by any personal dislike to General Wilkinson, for he had no acquaintance with, or knowledge of him. General Wilkinson had never injured him, or any of his connexions or friends; and he felt himself, therefore, free to decide; but he should illy discharge his duty to his country, if, on an occasion like the present, he did not advocate the most effectual means for an inquiry. He should express, on all occasions, what was his opinion, and he would say that the present case was a test of the impartiality of the House. If, notwithstanding party attachments, and deference to the Executive, the House should exercise that impartiality which should, of right, attach to them, he should have hopes of the salvation of his country. It was here, within these walls, that the fate of the country was to be decided; it was here, that corruption was to be arrested and exposed; if not here, he was afraid, no where.

He was more desirous of seeing this inquiry take the proper course, from events which had recently taken place, in which this officer had been charged with violating the Constitution of the country. The bleeding charter of our rights, and the oppression of our citizens, had, long ago, called upon the House for interference. If the Constitution was for no purpose, were paper-works, which a military officer could, with impunity, trample under foot, it was time the people should know it, that they might submit. But when he found in the Declaration of Independence, that, among the causes of our separation from the mother country, were these: "He has affected to render the military independent of, and superior to, the civil power;" he has given his assent "for transporting beyond the seas, to be tried for pretended offences;" that these, among others, were assigned as reasons for destroying the political bonds of society, as sufficient reasons for throwing off our allegiance; when he had seen, not a great and powerful Government committing these enormities, but a mere military commander committing them with impunity; when the spirit of the nation was so base as not to cry out with unceasing sensibility at these violations of its rights; when he saw this, he was disposed to think that the officer would not be too much injured by an inquiry into this particular charge, which was, to say the least of it, important. On consulting the Constitution, he found that the people of the United States were not sufficiently contented with the original articles of the Constitution, but other articles had been added, in which it was declared that no person should be deprived of life, liberty, or property, without due process of law; a right which one would think did not require the sanction of a Constitution to secure it. This right, which the people had so sedulously guarded as to include it in an additional article, had been violated, wantonly and without occasion. He wanted no evidence of this; it had been done at noonday, before the whole American people. He must himself express his astonishment that, after conduct of this sort, the person who had dared to commit these acts, had been suffered to exist as a military commander; and he conceived that he who had suffered him to do these things in a country of civil law, was scarcely less culpable than the offender. He expressed his surprise that, at this day, it was necessary to institute the inquiry now proposed. When was the cup of guilt to be full? When was the wounded Constitution of the country to receive its balm? He would not have it, in this case, understood that he believed the Executive had gone through with the whole business; he believed it would have been content if the effect alone of certain measures had been produced, without the means which were employed.

Would ever a case exist, in which a military commander would not render himself independent if he could? Would a case exist in which he could not find a pretence? They had seen the Emperor of France go forward, step by step, and had he ever been at a loss for plausible pretences? No, nor ever would be. A nation which submitted to the first violation was ruined forever. Let us, said he, once become familiar with the violation of our national honor, and we are familiar with it forever—if we ever suffered the Constitution to be invaded, more particularly by a mili-

tary power. Those military gentlemen who acted in their proper sphere, protecting and fighting for their country, should have his zealous support as long as their conduct was proper. He wished they might gather laurels in profusion; he wished they might be well provided for; and at the present crisis he would go so far as to say, that better provision ought to be made for their support than they receive at present. But, whenever they went out of the line of their duty; whenever they violated the Constitution of the country, which it was their duty to defend, they would become the foe of every honest man. He was persuaded that but few of our officers were entitled to this appellation.

Upon the whole, he thought that every gentleman on the floor was satisfied that the nation demanded that an effectual inquiry should be instituted; that even they who apologized for the conduct of this officer could not rest satisfied, unless an opportunity was given to inquire. As a member of the Grand Inquest of the nation, he could say that he had seen enough to induce him to enter his vote in favor of the propriety of effectually inquiring. The people were now arrived at that point where they could neither turn to the right nor the left. If an inquiry were had, the Commander-in-Chief of the Army of the United States on one hand might have the confidence of the people, or, on the other, the Army would be governed by a man of more fidelity and integrity.

Mr. Holland wished to be indulged with a very few remarks on this subject. It appeared to be completely admitted by gentlemen who had spoken on the subject, that this House had not the power to try the offence charged. But, although this point was given up, they were asked to enable the Executive to try General Wilkinson—to procure testimony for the President, to enable him to convict that officer, and asked to send for persons and papers for that purpose. The gentleman last up had told them that this was the only way in which they could convict General Wilkinson; that he knew of no other way, and was solicitous at all events to convict him. Mr. H. said it was honest in him to state his designs so candidly. It appeared that the gentleman wished an inquiry into the conduct of General Wilkinson; that he thought it was high time to make an inquiry, lest he should overwhelm the country and drive everything before him; and the greatest fault he found with his conduct, was in taking into custody Swartwout and Bollman, Colonel Burr and others, and not paying due regard to the constituted authorities of the country. If the gentleman's feelings were so exceedingly excited by this, Mr. H. did not participate in them.—General Wilkinson had acknowledged that he had been, and still was, responsible to the civil authority. Let those gentlemen whose individual rights had been injured apply to courts of justice, to the civil authority, and if General Wilkinson could not answer for his conduct, damages would be awarded against him. The law of the country was competent to punish every offence wherever the laws had been violated. Under this belief he thought it was not now necessary to take up this inquiry for his civil conduct. If he had acted improperly as a military officer, he was answerable to military courts, or to the Executive. And was it necessary to take this measure to enable a military court to examine into the conduct of General Wilkinson on this occasion? Why inquire into the business? Because the laws were not competent? Were there no laws which would operate on the case? It was not pretended to say that the testimony to be procured was to be a ground on which to fix a law. If it were, he should not object to it. Let us examine our laws, said he, and if they are not competent to punish offences, such as that charged, let us amend them.

Gentlemen talked much of the strong evidence adduced to the House. Mr. H. had examined the evidence, and it was not of that kind entitled to credit—certainly not stronger evidence than that produced to the court at Richmond against the conspirators. And what had resulted from that testimony? Those persons charged with conspiracy had been discharged from the court, who had paid no respect to the evidence, and set at liberty the persons accused. If what had been read could be called evidence, it was, to say the best of it, very vague. A paper had been produced (he could not say what it contained, for it was not in his possession,) said to be a translation of a Spanish letter. Had the translation been sworn to? Had the person who certified it been sworn? He believed not; if not, the evidence it contained, if any, was neither valid nor legal. How did it come into the House? How was it brought here? They knew not how it was procured or how it was brought forward.

With respect to the evidence of Power, it was not entitled to credit. He had certified one way, and he had certified the other; it was Power *versus* Power; by one certificate he had done away another. The House were surely not prepared upon this testimony to enter into a measure of this kind—to ask the President of the United States, if, indeed, it were in their power to do it, to make an inquiry. It would not be said that this testimony was of any force. True it was that a clamor had been raised throughout the Union on the subject; and there was a time when Mr. H. himself thought that officer and the whole army were corrupted—that the conspiracy had proceeded farther than it had—but, thank God! he had been convinced of his error. It was to be supposed that those concerned in the conspiracy would endeavor to prosecute Wilkinson, and that those connected would endeavor to throw an odium upon him. Be that as it might, the House should not inquire, except they possessed authority to do it. Certainly this case was not similar to that quoted of an inquiry into the conduct of General St. Clair; for that was not grounded on any specific charge.

It certainly was a general principle, that where a power did not exist to consummate a trial, to prosecute it to a final end, the power of prosecution did not exist at all; it therefore followed that the power of inquiring into this subject did not

exist in this House. Was it then proper that they should neglect former cases to form a precedent which would not be correct? Each department of the Government should exercise its own functions; and the moment the House commenced an inquiry of this kind they travelled out of their course, and showed that they had not that confidence which they ought to have in that department of Government competent to try the case. Why, then, proceed in this business? Certainly whatever the intention might be, it would have an improper effect on the trial of that officer. The House sending a resolution to the proper department requesting it to try a certain officer, operated as the opinion of the Legislature on his guilt. Could it be possible that a person thus treated could have a fair trial? He should doubt the justice of a trial conducted by persons thus directed; the proper authority should remain unbiassed and unprejudiced by such an influence as the passage of this resolution would operate. He was in hopes that the honorable gentleman who brought forward this motion would have withdrawn it when he had cooled, and as the gentleman had stated that he had gained his object. [Mr. RANDOLPH explained that his expression had been that one object was gained.] The gentleman then had obtained one object, probably the only object he intended—certainly the most valuable purpose he had in view.

Gentlemen who advocated this motion ought to show to the House that they had power to proceed in this way; that the existing authority of this country was not competent to try this officer. But they had not shown it; and they had certainly shown a disposition to do it if they could. He considered such a measure as this calculated to injure the officer, and in whatever point he viewed it as an improper measure. Had the gentleman from Virginia laid the evidence on the table, he would certainly have agreed to transmit these papers to the proper tribunal; which would have been sufficient notice of them—more perhaps than they deserved.

Mr. SLOAN said, he rose with an intention, and for the purpose of making some observations on what had fallen from the gentleman from New York (Mr. GARDENIER) whom he did not now see in his place, but if he was within the walls he should be glad to know. He had intended in the first place to have acknowledged and expressed, in his plain way, his gratitude to the gentleman for his endeavors to enlighten the House, and this he should have endeavored to do in a very few words. This member had expressed his extreme surprise that the motion which he had offered on a former day had not been more adverted to by the members of the House; he should have recollected that every member of the House was not endued with the same sagacity and penetrating genius which he so abundantly possessed. But permit me to say, said Mr. S., that I was not less surprised than the gentleman could be, that the first move made this morning was not (under existing circumstances) to withdraw the resolution. It was a fact known and believed by every member on the floor, that the proper authority had undertaken to investigate the object of the resolution. Under a consideration and from a full conviction that this House was not the proper tribunal to try this case, his surprise and disappointment had surpassed that expressed by the member from New York, that the subject had not been taken up yesterday morning. Mr. S. said he was then prepared to have made a pretty lengthy speech, the notes for which he now held in his hand; but the House had been taken up the whole day in discussing what course they should give to a certain (Yazoo) memorial. In the course of that debate he had been much instructed by the member from Vermont, (Mr. ELLIOT,) being warned of the taking the bull by the horns, and also something about a club and Hercules; although these expressions were somewhat obscure, they had raised some sensation in his mind, and induced him to think he had better be cautious how he made speeches on that floor; he had therefore concluded not to make this long speech which he had digested and prepared.

But, before he sat down, he would say, that being privy to certain circumstances, although he had no right to speak of them, he had certainly a right to think; and he should state what thoughts this resolution produced in his mind. Knowing, as no doubt every member of the House did, of what had lately turned up between certain great men, it brought to his mind a circumstance which might be thought simple, but he hoped he might be permitted to introduce a simile. When he went to school in his youthful days he had seen little affrays turn up between the boys; and he had known those who were likely to get the worst of the bargain, cry out, "I'll tell daddy or mammy; I'll tell my master." This struck Mr. S. very forcibly as applicable to the present case.

He would not detain the House much longer, but barely observe, that he hoped the amendment would be rejected; and after that, that the resolution itself would be rejected with all the contempt which it deserved.

Mr. ELLIOT.—I am opposed to the amendment proposed to the motion of the gentleman from New York, and to the motion itself; and shall probably be opposed to any amendment that may be offered to the original resolution. All this for the best of all possible reasons, because I am in favor of the original proposition in its original form.

Had I not long since resolved to adopt, as a political man, the motto, *nil admirari*, I should regard with some degree of admiration, if not of astonishment, the extreme squeamishness which is manifested by some gentlemen respecting an invasion of Executive functions, which they apprehend will be involved in the adoption of the resolution, and the very curious arguments which are advanced to support the position. But admiration and astonishment ought not to be excited by any political events or opinions of the present day.

It is to be regretted, that the gentleman from

New York (Mr. GARDENIER) has suffered himself to wander into so wide a field of eloquent declamation, respecting the celebrated campaign of the officer who is the object of the present resolution, against what have been called the Burrites at New Orleans. I regret it, sir, because I wished argument, and argument alone, to be used upon the present occasion. Still, whenever an opportunity is fairly offered for the expression of an opinion upon that subject, I shall not hesitate for a moment to express that which it has been my lot to form. It was a horrible, though bloodless campaign! And I believe, the continuance in the command of the army of the United States, in the chief command, subordinate to the President, who is the constitutional Commander-in-chief of our armies, of that officer, since that period, has placed a disgraceful stain upon the early annals of our new Western world, which the annual inundations of the Mississippi, were they increased to the magnitude and duration of those of the Nile, could not efface in a century.

Few members, perhaps none, have expressed any doubts of the propriety of the measure, if we possess the Constitutional power to adopt it. But as many serious doubts are entertained of its constitutionality, it may be proper to go into an argument with a view to dissipate those doubts.

It is triumphantly asked, from what Constitutional source do you derive this power? Here it is but fair to meet gentlemen on their own ground, and admit that if we cannot find in the Constitution authority for the measure, they may very properly inquire, *quo warranto?* By what warrant do you attempt its exercise? To answer the inquiry, as it is certain that the Constitution has not, in express terms, given us authority to adopt this particular measure, let us take a cool review of the whole of our Constitutional powers.

To me it appears that three classes of powers are bestowed upon us by the Constitution. Two of them by express terms of investiture, and the third by inevitable implication.

The first is the great and comprehensive class of legislative powers, properly so called; powers given to us as one of the branches of the National Legislature, and in that character alone.

Our warrant for the exericse of these all important and all comprehensive powers, while we confine ourselves within the proper orbit of legislation, exists in the first section of the first article of the Constitution. "All legislative powers here' in granted, shall be vested in a Congress of the 'United States, which shall consist of a Senate 'and House of Representatatives." These are the initial words of the Constitution. They describe no specific powers. They merely invest the general power of legislation. They refer us to other parts of the Constitution for the delineation of the particular attributes of the legislative character. They attach these attributes to us in common with the Senate. They give us no distinct and independent powers. Nor does any other clause of the Constitution, in distinct terms, vest in us the power for which we now contend.

The second class of powers is given to us, rather as a distinct and independent assemblage of individuals, than as a component branch of the National Legislature.

These are not powers, strictly speaking of a Legislative character, but powers with which we are invested for the purposes of our own organization, government, and discipline, as an independent political body. Such as the power to choose our Speaker and other officers; to judge of the elections and qualifications of our own members; to adjourn; to compel the attendance of absent members; to expel a member; to establish rules of proceeding; and to keep and publish journals.

Before I proceed to the third class of our Constitutional attributes I will just notice two eccentric or anomalous authorities with which the House of Representatives is invested by the Constitution, and which complete the circle of our political functions. We have the sole power of impeachment. As it respects the exercise of that power, we are divested of our Legislative character, and transformed into the great inquest of the nation. In certain cases we become the electors of the President. We then again lose our Legislative character, and are changed into an electoral body.

The third class of our Constitutional powers, and it is by no means an unimportant one, although it is not given to us in express terms, is essential to our political existence. I speak of those which, by an irresistible and incontestable implication, are bestowed as incidental to those which are specifically vested by the Constitution.

This incidental authority must of course be extensive and important. While it is our duty to cherish and sustain this great and plenteous source of power, we ought cautiously to govern ourselves by the true spirit and genius of the Constitution. Here great discretion is required, because here arises that danger of usurpation with which gentlemen are alarmed on the present occasion. Yet the existence of incidental power is questioned by none. By this alone are we authorized to pass resolutions calling upon the Executive for information; a practice coeval with the Government itself. Gentlemen will say that we then act in our legislative capacity. But they are mistaken. The Legislative power is the power of making laws. We only act as legislators, when we discuss among ourselves the project of a law, or act upon one received from the Senate. The information which we ask may or may not be given by the Executive. It is true that it is his Constitutional duty to give us information from time to time; but at what time and in what manner is left to his own discretion. Where we have no coercive we have no legislative authority. The information, if it be obtained, may or may not be such as to require or even to induce us to act legislatively. If then we possess this power of calling upon the Executive for information and it has long been settled, by a practical construction of the Constitution, that we do possess it, it is in our possession as incident not only to the actual but to the potential exercise of the general functions of legislation.

But an important distinction is taken, and one which would be conclusive, if it would bear examination. It is, however, a nominal rather than a real distinction. It is admitted that we may call upon the Executive for information, but it is said that we now propose to call upon him to perform his duty, in a case exclusively within his own Constitutional jurisdiction. It is just so in every case of a call for information. It is his duty to give us information, but in his own time and his own way. Calling upon him to communicate to us information, upon any subject whatever, we call upon him to perform a duty which the Constitution authorizes him to perform when and how he pleases. In every instance we may or may not legislate in consequence of what we obtain, and we do not legislate in the act of asking for it. We cannot coerce the communication, we cannot even demand it, we can only request it. We ask the President to do his duty in the one case as well as in the other. But it is said that as we cannot impeach a military officer, as the President alone can remove him, we can neither ask for his removal, or for an inquiry into his conduct. It seems to me to be considering rather too curiously to consider so. The fact is, that we propose to request an inquiry, for the very purpose of obtaining information, and for that purpose alone; and, as in every other case, the information, when obtained, may induce us to act in our Legislative capacity. Here it is proper to call the attention of the House to the clause of the Constitution which was read this morning by the honorable mover of the resolution. "No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any King, Prince, or foreign State." Can any one doubt our power to pass a law for the purpose of giving effect to this great and prominent provision of the Constitution? We cannot legislate upon the subject *ex post facto*; we cannot provide for the punishment of an infraction of this article which has already taken place, but we can guard against such an infraction in future. It is said that your Commander-in-chief has long been the pensioner of a foreign Power. We only wish that his innocence may be established or his guilt developed. If the development of his guilt should be the result of the proposed inquiry, if he should be proved to have been the great infractor of the Constitution, what more powerful argument could be urged to the members of the National Legislature, to induce them to pass a law to prevent or punish such treacherous conduct in future?

Some gentlemen who appear to doubt our power to pass the resolution, declare that the information which we possess upon the subject ought to be transmitted to the President, and that they will vote for its transmission. How is this to be done? Will the Speaker or the Clerk transmit it without the order of the House? It may be presumed not. The House, then, must act upon the subject. And surely it will be more proper and dignified to request the President to do a certain act, than to hint to him that we expect him to do it. And our right is the same in one case as in the other.

To this point then the coast is clear. We only ask for information, and we have a right so to ask. But we shall be told that we are begging the question, and that the great difficulty which exists in the case still recurs upon us. "You propose to call upon the President to do his duty. One branch of the Government has no right to make such a call upon another." Upon this point alone I should be willing to rest the decision. Has not one branch of the Government a right to make a request to another? What forbids it? The right is certainly not expressly given. But if it be not forbidden by any part of the Constitution; if it be not reserved to the States, the people, or any power on earth; if it be naturally incident to the intelligent and proper exercise of the great powers actually vested; and if it has long been declared to exist by a practical construction of the Constitution; the exercise of such a right is at least harmless, and of course neither unconstitutional nor extra-constitutional. From the course which I have thought it my duty to pursue, not only in the present session, but on former occasions, I shall not be suspected of possessing an overweening confidence in the Executive; but I will venture to say that the Executive will feel none of that squeamishness upon this subject, which is manifested here. Whatever may be my opinion as to particular measures of the Executive, I have too much confidence in his good sense and patriotism, to believe that he will object to a compliance with our request. If, indeed, he shall be of opinion that we are invading or usurping the proper province of Executive prerogative, it will be his duty to tell us so. But this, I presume is not apprehended by any one.

I have confined myself closely to the question. The view which I have taken of the subject occurred to me after the debate commenced this morning. I feel a real, not an affected diffidence, in my powers of argument upon this or any other subject. I cannot hope to convince—I will not say the members of this House, for the remark would imply that they are inattentive to my observations—any assembly of intelligent men whatever. But when doubts arise upon a great Constitutional question it is proper for every one to throw in his mite with a view to dispel those doubts. This has been done. If any good effect has been produced, it is very well; if not, I have done my duty.

Mr. DANA said it was not strange, that upon a subject that was as greatly interesting to the people of the United States as this—upon a subject that went seriously to affect the character of the commanding officer of the Army, that gentlemen should entertain a difference of sentiment as to the best course proper to be pursued. There seemed to be but one opinion as respected the general charge, that it merited serious attention in some way and in some form. It concerned the character of the officer himself, if innocent,

that an inquiry should be had, as well as it concerned the people and the nation if he were guilty. In the situation in which he was now placed, and feeling as he did, how much the reputation of a military officer was his best estate, Mr. D. thought it necessary to exercise peculiar discretion, and not (though other gentlemen appeared to think differently) to express any opinion on the innocence or guilt of this officer. If there were information before the House which might give a full knowledge of the facts he would wish it should be so disposed of as to meet a fair inquiry; and could wish also that the Delegate from Orleans should be called upon to declare what he knew of the acceptance by this officer of any money, or of the project or agreement of any persons to dismember the Union, or to render it dependent on any foreign Power; and for this reason, that this gentleman, received as a member of this House, though not having the privilege of voting, enjoyed every other privilege of members of the House, being entrusted with the discharge of high public functions and amenable to the authority of the House; and that the privilege of this House must be deemed precedent and paramount to the authority of any court martial or court of inquiry. Although this was his general opinion on the subject, he doubted very much the propriety of adopting the motion of the gentleman from New York for the appointment of an authorized committee. If the House had resolved to appoint a committee of inquiry which should directly investigate the conduct of any officer, it would be proper to arm such committee with the power of sending for persons, papers, &c. As he now understood the object of the present resolution, it was merely to appoint a committee to inquire whether the House should adopt a particular resolution requesting an inquiry, and was, therefore, different from a motion for inquiry. In the case of St. Clair, which had been quoted, the committee was appointed to inquire, and not to consider the propriety of inquiring; so that the case did not apply. It was very immaterial whether the amendment were agreed to or not; but as a motion had been made to amend it by striking out this part of it, he should give his vote in favor of the motion.

Mr. FISK was opposed to the amendment and to the resolution; and was surprised at being so long detained on the subject this day, after being told that a court was already authorized to make the inquiry. This being the case, if no other end was to be attained than merely to throw light on the guilt or innocence of General Wilkinson, there was now no necessity for adopting the resolution. If no court were ordered, it would be proper to inquire whether it would be necessary to adopt the resolution. If there was no sufficient evidence before the House on which to ground the resolution, why should it be adopted? Was it to throw the additional weight of the House of Representatives into the scale? He presumed no gentleman in the House would acknowledge this object.

Mr. F. did not believe the House possessed the power to institute an inquiry. It did not follow that they possessed this power merely because the Constitution had not prohibited it to them; and the Constitution had certainly not given it to them. The gentleman from New York (Mr. GARDENIER) had told them that if they could control the master, they had power over the servant. Mr. F. said this did not follow as a correct conclusion. The House could impeach the judges of the Supreme Court, but could not remove a clerk of the same court; they could delegate the power, but could not exercise it themselves. For what purpose should the inquiry be made? When made, could they effect any object by it? No. And why? Because the Constitution had reserved to this House a power to remove the superior officer, who alone could remove the inferior. If gentlemen thought fit to bring forward a resolution to inquire into the propriety of impeaching the superior officer, and showed cause for it, no objection could be made.

While gentlemen were so extremely careful to guard the Constitution from violation, he begged they would not trespass on it themselves; while they complained of a supposed breach of trust by a public officer, he hoped not to see it realized in this House. The Constitution had confined the power of the House within a certain limit; and when they exceeded that limit, they violated the Constitution.

The gentleman from New York had told the House he hoped what had been denied in the palace would not be refused here. Mr. F. asked what had been denied in the "palace." The gentleman from New Orleans had told them that the evidence did not relate to the subject, and that it was not sufficient for conviction of any person. The gentleman from New York had also stated that if the House transmitted this evidence to the President without referring it to a committee they would be left in the same situation as they were now, because the gentleman from New Orleans would keep his word, as he always did. The gentleman from New Orleans might consider this as a compliment; Mr. F. was willing all the honor intended should attach to him, but he did not believe that gentleman was possessed of such principles; he did not believe any gentleman was so lost to the honor of his country as to suffer private pique to seal his lips when called upon to give evidence by any authority whose duty it was to inquire. Would the gentleman, indeed, decline in such a case? It was impossible that he could. Mr. F. could not have so contemptible an opinion of any gentleman whatsoever as to suppose that his love of country would not triumph over private animosity.

The same gentleman from New York had very emphatically asked, when would the cup of guilt be full? Mr. F. said, when gentlemen came forward to justify treason—when they attempted to paralyze all the exertions made to arrest such nefarious plans as those of the late conspiracy—then would the cup be full; then would the distraction of the country be complete.

But, the House were told, this officer had viola

ted the Constitution. How had he violated the Constitution? In arresting traitors? And should traitors alone enjoy all the Constitutional rights? Mr. F. said this man also had rights. Let him have a fair inquiry. Why influence the public mind and blazon his guilt (if guilty) from this source? Why had not the prosecution been pursued in the courts of justice? Why had not this information been given to the President? Why was it brought to this House? Let it be brought forward properly. He believed when the evidence adduced was examined, it would not bear the light.

Mr. F. had no doubt that Burr and all his friends would rejoice that all the evidence against them should be arrested in any way; and whatever were the guilt or innocence of General Wilkinson, it would be proper that the thing should pursue the usual course. He could not see why this had been brought into the House, or why it was pursued and insisted on while an inquiry was progressing in the proper way. Believing this inquiry not to be within their Constitutional power, and no necessity to exist for it, if it were, he should give his vote against it in every stage of the business.

Mr. W. ALSTON said it was not his intention to detain the House one moment; he rose but with a view to state to the House that facts had been strangely misrepresented. When the gentleman from New Orleans had risen a few days ago, he had told the House that the information which he had meant to communicate, and which had been disregarded year after year, did not relate to this subject. And what was the language which had this day been held forth on the subject? A deaf ear had been turned to the subject in the palace!" In order that he might be assured that this was an egregious error, Mr. A. said he had asked the gentleman from Orleans if he did not understand him correctly? I did understand him to say, said Mr. A., that his information did not particularly relate to this subject, and I understood him correctly: I wish it to be explicitly so stated to the House and to the nation.

Gentlemen who heard the observations this day made, would attribute to them that credit which they deserved. When was it that General Wilkinson became so obnoxious to a particular part of the community? Not till his exertions had saved the country from ruin—not till he had raised his hands against Burr and his associates. Look to his appointment to office some time ago, and to those who supported him; revert to the language they used at that day, and listen to their denunciation now—"Wilkinson had violated the Constitution—the Executive held him by the hand—his conduct was not inquired into—the Representatives of the nation were, therefore, called upon to do that duty which the Executive had neglected;" This was now the language of those who once cherished him. What could cause this wonderful change of sentiment?

The present question presented itself at every moment in a very different shape. If the object of it were merely to give to the Executive information which it did not now possess, no one would object to it. The gentleman from Connecticut (Mr. DANA) had told the House that the evidence of the gentleman from New Orleans ought to be commanded, and it could not be done but by the House—that the gentleman possessed all the privileges of a member of this House, and he doubted much whether his evidence could be procured in any other way. Would the evidence of the gentleman be taken down and delivered through the medium of newspapers as evidence for a committee of inquiry? This must be what the gentleman meant, although he cared very little whether the committee had power to inquire into it or not. Was the House in possession of any evidence whatever on this subject? Mr. A. said not. No evidence whatever had been laid on their table on this subject. There was before them a resolution on which they were called upon to decide. In making this decision had they before them any evidence on which to found their agreement to it? Let us get possession of the evidence, said he, and then the House may make a proper disposition of the resolution, and of the papers bearing on the subject, in their possession. If a court of inquiry had been ordered, was not that sufficient? Was not the purpose of the resolution thus answered? What other object was to be attained? He could see no other, except it were to give gentlemen an opportunity to arraign the conduct of the Executive, and exhaust their imagination in sheer invective. He could not for his soul see, after they were informed that an inquiry was ordered, why they should inquire further.

Mr. G. W. CAMPBELL rose to answer a question of the gentleman from New York, for what purpose he would send these papers to the Executive? There were very few gentlemen in the House to whom an answer to such a question could be necessary. Was it as evidence that they were to be sent? Mr. C. had stated before, and he repeated it now, that it should not be sent as evidence, but as information which would enable the President to procure evidence. The papers read were not evidence. It must be well known to that gentleman, who Mr. C. believed was a legal character, that no extracts of letters, memorandums, &c., were evidence; they might however serve as an aid to procure evidence. Gentlemen inquired if he would send a part, why not the whole? Mr. C. would transmit to the proper authority all the information which might be in possession of the House, but would not take any steps for procuring more. It was perfectly within the power of any person to inform any tribunal that certain information was in possession of any member of this House, if it were wished to procure it.

Mr. C. did not agree that a court of inquiry did not possess the power of collecting evidence. He was of opinion that it was competent to call upon any person for information. The only doubt was, what might be the effect of its summons upon a member of this House? The practice in these cases had been for the House to give leave of ab-

sence to any member to give evidence, when it became necessary on any trial, and the House would not hesitate in this case to give it to the gentleman from Orleans; and leave being given, Mr. C. was convinced that the gentleman would not hesitate to attend and give his evidence. It was not consistent with the principles of justice that a court martial should not possess power to bring before them persons who possessed information on the subject under their consideration. If a doubt existed whether they could call on any other than military characters, the principle ought to be fixed one way or the other.

The case cited by the gentleman from New York of a Senator, had no relation whatever to the present subject, and was meant merely to show that the House had the right to clothe a committee with power to send for persons, papers, &c. The distinction which had been before taken, and which still applied, was this: that where the House had a right to examine and act on a subject, they might clothe a committee with this power. If the House possessed the right to use the evidence when they got it, he did not doubt their power to send for persons, papers. &c. But if the right to use it were not possessed by the House, the power to obtain it ceased.

It had been stated also by the gentleman that he could not sufficiently express his reprobation of the position taken by some gentlemen, that this House had not authority to direct the President to institute an inquiry. For himself, Mr. C. could not account for the opinions the gentleman entertained, or on what ground he could support them; for the gentleman had not deigned to examine into minutiæ, had told them he could not condescend to reason. Mr. C. conceived the gentleman had evinced, by his conduct, that the arguments in favor of a doctrine contrary to his own could not be met by fair argument.

The gentleman from Vermont (Mr. ELLIOT) had told them, because this power was not expressly denied, that the House possessed it. Now Mr. C. conceived that the House had no powers except such as were given to it by the Constitution, and that, when about to act on any case, they should look to that instrument as to a power of attorney from which they derived their authority, and unless they found it there, that they ought to stop and proceed no further in the object under their consideration. It was not pretended that this House could impeach a military officer, or that the Executive was bound by the instructions of the House on this subject; it was not a legislative act, nor intended to produce a law. It was in this view, that in his opinion, the House ought not to step out of its way to give directions to any part of the Government not immediately under its control.

He could assure that gentleman and all who heard him, that no man was more unwilling to obstruct an inquiry into the conduct of the Commander-in-Chief of the Army, or would go further than himself to promote it. It was wished for strongly in the country which he represented; but he was induced to believe the object was about to be accomplished by the only proper authority indeed, that it was already in its progress. It seemed as if the gentleman on his right (Mr GARDENIER) depended entirely on the resolution for an inquiry. Mr. C. almost doubted his hearing of the gentleman's language, that since a deaf ear had been lent to information in the palace they, the Representatives of the nation, ought no to be silent. It was important that facts should be correctly stated and correctly understood. There had not been heard in this House even an insinuation that this transaction had come to the knowledge of the Executive, or that the evidence adduced was known to that department. The contrary was stated; for it had been expressly stated that this evidence had neither been before the grand jury, or the court at Richmond. So far, then, from the Executive having had it in his power to avail himself of this evidence to inquire it had never been in his possession or before him. Mr. C. had thus stated the manner in which he understood the matter, that false impressions might not go abroad.

Mr. GARDENIER said that he never would, for his part, consent to the making such a request as that contemplated to the President, except he was well convinced that such an inquiry was necessary. Before, therefore, he would consent to adopt the main resolution, he would wish to put himself in possession of all evidence that was within his reach, to satisfy his own mind that the inquiry was necessary. If it were contended, however that this resolution should not be adopted, on the ground that it was not necessary to make such a request, it followed that they must take some course or other to ascertain what was the real ground. How should they proceed in any other way than in that which he had proposed? The gentleman from New Orleans might be called upon to give evidence on this floor; but Mr. C. apprehended that this was not such a body as could properly receive oral evidence. It should be sent to a committee for that purpose; they might receive that evidence in form; it would then answer the best purpose, and would be obtained in the shortest way. It was for this reason that he had added to his motion the power to send for persons, papers, &c.

The gentleman from North Carolina (Mr. ALSTON) seemed to apprehend that Mr. G. had mistaken what had fallen from the gentleman from New Orleans on a former day. Mr. G. had stated that the Executive had turned a deaf ear. What did the gentleman from Orleans say? That he had it in his power to give testimony which would implicate General W., he did not deny, and what was the reason that he had not given this information to the House? Because he had before made application to the Executive to give information, not only with regard to this officer, but to others, and the President had turned a deaf ear to all; not only to this particular point, but to the whole. The gentleman's expression, "particularly," did not convey a meaning that this was not among the subjects, but that it was not exclusively the subject of his communication, being

included in the rest. Mr. G. so understood him, and the gentleman would correct him if he misunderstood him.

The gentleman from Tennessee (Mr. CAMPBELL) had taken a distinction between evidence and information; the gentleman would send these papers not as evidence, but as information. Mr. G. would not enter into a grammatical contest as to the exact definition of the word information. If he would send these papers for informing the Executive (to use his own word) why not send other testimony, which was not upon paper? His argument or reasoning, if it amounted to anything, was equally applicable to one as to the other. As Mr. G. knew that they had means of acquiring more information than they possessed, and that that proposed to be acquired would be more to the point than what they had, he wished to send that also. He was not, however, tenacious of the particular form of his motion. If gentlemen thought the House should appoint a committee of inquiry in the first instance, he was agreed, so that the great object was attained by securing the American nation from the danger of having its forces commanded by officers not worthy of confidence, on the one hand, or of wiping off the stain which had attached to the character of the Commander-in-Chief on the other. God knows, said he, that I would rejoice as much as any gentleman on the floor, after a proper inquiry, to find that this officer did not merit the accusation, and would be the first to retract my opinion on conviction of my error.

The gentleman from Vermont (Mr. FISK) had asked at what time the character of General Wilkinson had been first impeached? Mr. G. was no advocate of Burrism; nor was he one of those opposed to General Wilkinson for putting down Burrism; for he never had confidence in Burr at any period of his life. Therefore, if the gentleman meant to insinuate that he had symptoms of partiality for any other than the good old school, he was greatly deceived. Mr. G. said he was a friend to this Government, and thought it should not run to democracy on the one side, or aristocracy on the other; and also thought, when a military commander violated the Constitution, it became a duty for the people to raise their voices against it. He had dared to express his opinion, because he conceived it to be his duty; and he hoped no member of this House would be deterred from doing his duty by having his name written in every house in the city. He had a confidence in every Representative of the people. He looked on the events spoken of by the gentleman from New Jersey as doing honor to the nation, and was happy that a member of this House had not descended so low as to disgrace himself by such a competition; and when the time should arrive that a Representative should be deterred from his duty by insult, he should feel the character of the House degraded. Upon the whole, if a serious, fair, and candid inquiry, was intended to be made, he should be content with any mode which might be pointed out.

Mr. CLARK said the gentleman from North Carolina (Mr. ALSTON) had mistaken him, representing him as having used the word "meant," instead of "attempted." Mr. C. said he had not, in attempting to make these communications, mentioned General Wilkinson's name; nor did he know whose name he had then mentioned. His intention at that time might be known by application to the Secretary of State for the letter which Mr. C. had written to him. His information had related to efforts made by the Spanish Government to detach the Western country from the Union. He had various proofs of it, and among others, a letter which he now held in his hand, written in Spanish, a translated extract of which he read. He had thought it his duty to give this information; he had not been attended to. He presumed not, however, to call the Executive to account for its conduct. As Consul, he (Mr. C.) had attempted to make it known, and that attempt was made known further by an application to know if he was understood. [A member asked the date of the letter from which an extract had just been read.] Mr. C. said the letter was dated the 27th April, 1796. The other part of the letter related to matters not relevant to business. It would show that there had been a delegate sent by certain persons in Kentucky to treat, and this he wished to have made known. [Mr. CHANDLER asked at what time Mr. C. became possessed of this letter.] Mr. C. had a knowledge of the circumstances to which the letter alluded before he came to this part of the country, but he had not the letter in his possession at that time. [Mr. CHANDLER asked, if by "coming to this part of the country," the gentleman meant to the present Congress.] "No," said Mr. C., "it was the first time I came here, in the year 1802."

The yeas and nays being taken on the motion for striking out that part of the motion for commitment of the resolution to a select committee, which gave power to send for persons and papers, it was decided in the affirmative—yeas 72, nays 38, as follows:

YEAS—Willis Alston, jr., Ezekiel Bacon, David Bard, Joseph Barker, Burwell Bassett, William W. Bibb, Thomas Blount, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, George W. Campbell, Peter Carlton, Epaphroditus Champion, John Chandler, John Clopton, Orchard Cook, Jacob Crowninshield, Richard Cutts, Samuel W. Dana, Jno. Dawson, Josiah Deane, William Findley, Meshack Franklin, Francis Gardner, Isaiah L. Green, John Heister, James Holland, David Holmes, Benjamin Howard, Reuben Humphreys, Daniel Ilsley, Robert Jenkins, Richard M. Johnson, Walter Jones, Thomas Kenan, William Kirkpatrick, John Lambert, John Love, Robert Marion, William McCreery, William Milnor, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Jonathan O. Mosely, Gurdon S. Mumford, Roger Nelson, Wilson C. Nicholas, Timothy Pitkin, jr., John Pugh, John Rea of Pennsylvania, John Rhea of Tennessee, Matthias Richards, Samuel Riker, Ebenezer Seaver, James Sloan, John Smilie, Jedediah K. Smith, John Smith, Henry Southard, Clement Storer, John Taylor, David Thomas, John Thompson, Jabez Upham, James I. Van Allen, Robert Whitehill, Isaac

Wilbour, Marmaduke Williams, Alexander Wilson, and Richard Winn.

Nays—Evan Alexander, William Blackledge, John Boyle, John Campbell, Martin Chittenden, Matthew Clay, Howell Cobb, John Davenport, jr., Joseph Desha, Daniel M. Durell, James Elliot, William Ely, James Fisk, Barent Gardenier, Edwin Gray, John Harris, William Helms, William Hoge, Joseph Lewis, jr., Edward St. Loe Livermore, Edward Lloyd, Matthew Lyon, Nathaniel Macon, Josiah Quincy, John Randolph, John Russell, Dennis Smelt, Samuel Smith, Richard Stanford, William Stedman, Lewis B. Sturges, Samuel Taggart, Abram Trigg, Nicholas Van Dyke, Archibald Van Horne, Killian K. Van Rensselaer, Jesse Wharton, and James Witherell.

The motion for reference was then lost without a division.

The original resolution now recurring for consideration,

Mr. Dana said the course which appeared most proper to him would be to transmit the information to the President of the United States, that he might proceed in such a manner as to him might appear correct, and most for the public service. Without undertaking to express what was the amount of evidence, without saying whether innocent or guilty, it would be expressing an opinion that this information came from such a source, and was of such a nature that it should be attended to: and as they found that there was a gentleman in the House possessed of information, Mr. D. had prepared a form of a resolution for procuring his evidence, which the Speaker could determine to be correct or not.

Mr. Blackledge said, as there was now no information before the House on which they could act, he should oppose the resolution. He had been in favor of a reference in order to obtain that evidence which was necessary for proceeding on the subject. Being now without any evidence which would authorize a resolution, he felt compelled to vote against it.

Mr. G. W. Campbell rose to inquire whether the House were in possession of any documents or not relating to this subject?

The Speaker said it was not.

Mr. Campbell then said that he should vote against the resolution. If they were in possession of the House, (and this was sufficient reason for his present vote,) he would vote to transmit them to the Executive of the United States.

Mr. Gardner said it had been stated that an inquiry had been instituted; he was willing to believe it; if such was the case, they might obtain the inquiry without the proposed resolution, but the proceedings of the House would have a bearing on the public mind. Mr. G. was sorry that evidence had been brought forward in this way, and had reduced the House to such a situation, that adopting or rejecting the resolution must convey an expression of their opinion. He was unwilling to vote for a resolution carrying with it such a weight as this resolution must. If the resolution were rejected after evidence had been produced from two different sources, what impression would it convey? If he were to vote for its rejection, he should not give full credit to the evidence, which had made such an impression on his mind that he felt it his duty to give this information to the suitable authority to make the inquiry; but he was sorry that the question should have been proposed to the House in this manner. He could wish the resolution might be disposed of in some way, and that the measure recommended by the gentleman from Connecticut should be adopted.

Mr. Burwell said, before the question was taken upon the resolution he must be permitted to explain his vote. It would be recollected by the House, that he had a few days since declared that he considered it proper that an inquiry should take place into the conduct of the officer implicated; that it was due to General Wilkinson himself, the Government, the people, and the army under his command. It was peculiarly important at this time, to understand thoroughly the character and disposition of an officer holding so high a command in the service of the United States there were then some doubts expressed, as to the form in which the subject was presented, but a vast majority seemed to be favorable to its adoption, for the same reasons which influenced his mind, and which were expressed to the House. He could not tell what had produced a change and introduced such a diversity, if not a complete revolution, in the opinions of gentlemen; he had paid the closest attention to the discussion, and still thought the House might adopt the resolution, without offering disrespect to the Executive branch of the Government, without transcending their Constitutional powers, or doing injustice to the person whose conduct was involved. They were now told a court of inquiry had been ordered, and that it was unnecessary to proceed. This Mr. B. said might or might not be the fact. he had no doubt the member who made the declaration had been so informed. But rumor has never been considered sufficient authority to arrest the proceedings of Congress on any subject before them. The deliberations of that body could only be influenced by information laid before them in a manner less susceptible of doubt.

Mr. B. said, he wished the House to recollect that they were not sitting in their conclave, with closed doors; everything which passed upon the floor was reported; not an expression or idea but was known to the people, who would be able to separate that part of the discussion irrevelant to the subject, and appreciate properly that part relative to it. What then was the inference? With this copious stream of light, the true motives of every member would be readily discerned. He felt the fullest confidence in the Executive, and was certain the consciencious discharge of his duty would never be construed into the contrary. Mr. B. said the President would never impute to men who had here and elsewhere uniformly evinced the warmest attachment to their country and the most liberal support of the Administration, dishonorable motives, when others could so readily explain their conduct; for he had too much good sense, and was too well acquainted

with the Constitutional duties of members of this branch of the Government, to imagine any disrespect was intended to him. But said Mr. B., the facts stated by the gentleman himself, who originated this motion, preclude the possibility of this imputation; they expressly tell you the information upon which they act has never been in the possession of the Executive department; how then could he act on evidence, the existence of which was utterly unknown to him? The gentleman a few days since declared he had only been himself in the possession of it two or three days.

[Here Mr. RANDOLPH interrupted Mr. B., and observed some of it had been put into his hands the very morning preceding the motion.]

Mr. B. said, it was still more impossible to attach the blame. The Delegate from Orleans had equally exculpated the President. The intelligence he intended to have imparted, we have been told, did not relate to the subject of the resolution. It was worthy of remark, that at the same time they were informed that a deaf ear had been turned to what was attempted to be communicated, the papers containing it were left with the Secretary of State, and lodged in his office; and the presumption is they were properly attended to. Mr. B. called upon gentlemen to bear these things in mind, and not suffer themselves to be driven from the true course by the observations which had fallen from any side. This was his determination, since he neither approbated the language or participated in the feeling which had been expressed by some members during the debate. Mr. B. said the very act of transmitting the evidence, instead of insinuating any charge, would clearly be an expression of confidence, and certainly a respectful communication of information to the Executive, to be properly used for the public good.

Gentlemen had indulged themselves in fulminations against the Commander-in-chief. Mr. B. would not imitate them. During his remarks he had sedulously avoided expressing any opinion of the merits or demerits of that officer; he would neither prejudge him, or forestall public opinion, by giving utterance to his impressions. He wished to bring every offender to justice, but not to deprive him of the privilege of the accused, an impartial trial. Mr. B. said, within a few years past, the United States had been menaced by the most serious conspiracy. The nation had been convulsed by a plot, whose machinations were extended and ramified into the remotest corner of the country. The despicable wretches who had reared this detestable fabric, who deserved, and he hoped had received the detestation and execration of every honest man, attached to his country, and capable of estimating the value of those liberties which were threatened with destruction, had notwithstanding received a fair trial; they had passed through all the process of an investigation, in the slow pace of the common law. He thought it certainly not less just and incumbent to give a fair opportunity to the Commander of our Army to meet the charges exhibited against him, and dispel the supicions which clouded his reputation, by an investigation, if he was really innocent. Mr. B. said he had no hesitation in saying, that the officer in question should invite, himself, the most thorough examination; this was the only expedient to remove the obloquy under which he labored; and this course ought to be equally desirable to gentlemen, whether friendly or inimical. But, said Mr. B., there is a consideration superior to those of a personal nature, the delicate state of our affairs; the possibility of a contest with foreign nations, and the indispensable necessity to give efficacy to our army, and quiet to the nation; whose jealousy was admitted on all sides to be great and could only be quieted in this manner. A gentleman from New York (Mr. GARDENIER) had spoken of the events at New Orleans, and the violation of the Constitution by the Commander-in-chief. Mr. B. said, he certainly condemned, and would readily punish every infraction of that instrument by the military; but he would ask gentlemen if they really possessed correct knowledge upon that subject? and suggest the impropriety of pronouncing upon the guilt of a man from rumor, of the most contradictory kind. He advised gentlemen to be thoroughly and minutely acquainted with the occurrences in the Western country, before they pronounced that General Wilkinson had not contributed essentially to the preservation of tranquillity in that quarter of the United States. Mr. B. said, he thought whenever a member of the House in his place gave information relative to the conduct of a public officer, the House could do nothing less than make a proper disposition of it; and whenever he demanded an inquiry to be made, that request ought to be granted. It was due to the members who believed inquiry necessary. They became themselves responsible for the correctness of their information, and became pledged for the propriety of acting upon it. The House must certainly recollect, a few years since, an inquiry was demanded into the official conduct of the Postmaster General, and it was in his opinion very properly granted.

Mr. B. said, he should protest against being implicated in all the sentiments which might be expressed by those who intended to vote in the same way he should himself; nor should a fear of that sort ever induce him to abandon the course his judgment approved, and his conscience sanctioned. He thought, however, that the mover of the resolution ought to have laid on the table all the papers which he had read in his place; they might have been examined, and estimated with more correctnesss by the different members.

Mr. TROUP would make one observation in addition to what had been said by the gentleman last up. Whether the evidence before the House was material or not, whether the character of General Wilkinson was above suspicion or not, or whether it was unimportant that the Commander-in-chief of the Army of the United States should sustain a good character, it was not necessary for him to say; but before it was determined to increase the regular force of the country the House should be

prepared to say that James Wilkinson, who was to command it, was qualified to direct that force for the defence of the nation against its enemies, and that it was impossible for him to direct it otherwise. The Army, to enable them to do their duty, must have confidence in their General, and the people of the country must be satisfied that the ambition of General Wilkinson was limited, and that his integrity and patriotism would forbid the abuse of his power. For this reason, and this alone, should he vote for an inquiry. The sooner the conduct of this man was justified if he were innocent, or condemned if he were guilty, the better for the country; and if his conduct stood in the eyes of Mr. T. as white as the driven snow, he should vote for an inquiry after the evidence and charges which had been exhibited.

Mr. Quincy did not consider himself on this occasion as passing on the conduct of General Wilkinson, nor did he consider it necessary on this occasion to canvass the conduct of the Executive or of any officer of the Government. Their only object now was to understand their own situation and form a correct opinion. He should make to the House a very short statement of what he thought, and the reasons which would determine his vote. They were called upon to do what? To vote for an inquiry? No—to make a request for an inquiry. Some gentlemen had doubted whether they would exercise a Constitutional power in requesting an inquiry. Mr. Q. considered that they had a right to express a feeling or a wish; and that they had a right to express their sentiments and opinions on any subject, if the evidence produced to them or if their own knowledge would warrant such opinion. A gentleman in his place had stated to the House that he had evidence in his possession relative to this public character; not only that he had this evidence, but also referred to another who could give information on the subject. And what had the House done, on the occasion? It had neither asked the gentleman to produce the documents which he had, nor had called upon the delegate to give information on the subject. Mr. Q. could not reconcile this to his sense of consistency. It appeared to him there had been evidence sufficient produced to the House to induce them to express a wish to know more.

There had been but one objection of weight made to the present resolution—that it would bear hard upon General Wilkinson. The House were placed in such a situation that they must do something. Whether should they adopt the resolution or not? In the one case they did all they could to farther an inquiry by laying evidence before the Executive and requesting him to cause an inquiry thereupon; in the other, they did all they could to smother an inquiry. Without alluding to evidence and information which had been adduced on this floor, it appeared to him that it was perfectly within the right, perhaps the duty of the House, under general reports, whether correct or not he would not say, and from some circumstances, to request an inquiry; and that, under existing circumstances, they had a right, without the evidence produced, to express their opinion on the subject, and to request an inquiry, even in justice to General Wilkinson, that he might have an opportunity to relieve his character from the clouds with which it was overcast. Under this view, it appeared to Mr. Q. that the House would not exercise the rights with which they were vested for the public good, or do their duty to the people, if they did not adopt the resolution.

Mr. Chandler said gentlemen appeared to urge the adoption of the resolution, to furnish the Executive with information which the House had in its power. A gentleman had risen in his place and read to them a letter which he had stated to be from Mr. Power, and other papers, some of which were said to be translations.

Mr. C. knew of no way in which to get this evidence to the President of the United States except the papers were laid upon the table. If gentlemen possessed evidence which would be sufficient to convict General Wilkinson of a crime of a civil nature, let them inform the Attorney General of the United States, that he might institute a suit against that officer. If the evidence impeached his conduct as a military officer, send the evidence to the court which would sit on Monday next to inquire into his conduct as a military man. If the House were to act on this subject in any manner, it must be to procure evidence to be sent to a court. He did think it necessary, for his part, that an inquiry should be made. An inquiry was in progress; and he should therefore vote against the resolution.

On the question that the House do agree to the first part of the motion for a reference of the proposed resolution to a select committee, it passed in the negative.

The said resolution being then again read at the Clerk's table, the question was stated from the Chair, that the House do agree to the same; and debate arising thereon, an adjournment was called for: On which, the House adjourned.

Wednesday, January 6.

Mr. Jacob Richards, from the committee appointed on the twenty-eighth ultimo, presented a bill granting to André Joseph Villard a sum of money for his invention and improvement in the mode of mounting heavy cannon for batteries; which was read twice and committed to a Committee of the Whole on Monday next.

On motion of Mr. George W. Campbell,

Ordered, That the unfinished business depending yesterday at the time of adjournment, on the question that the House do agree to a resolution proposed by Mr. Randolph, on the thirty-first ultimo, for an inquiry into the conduct of Brigadier General James Wilkinson, do lie on the table.

MEDITERRANEAN FUND.

The House resolved itself into a Committee of the Whole on the bill continuing in force, for a further time, the first section of an act, entitled "An act further to protect the commerce and seamen of the United States against the Barbary Powers."

Mr. G. W. CAMPBELL moved to insert the words "revived and" in the bill. The reason for this was, that the act which this bill went to continue, had expired since the present bill was reported; it was therefore necessary that it should read "is hereby revived and continued in force."

Mr. DANA said the United States were not now in a state of hostility with any Barbary Power, and the naval force employed by the United States in the Mediterranean had been recalled. The duties proposed by this bill were not intended to protect the commerce of the United States against the Barbary Powers. He therefore submitted it to the sense of the Committee, whether the law on the face of it should not speak the purpose it had in view; whether it was proper to revive a law, which had expired by the same title, when a different purpose was contemplated by it. Instead of Mediterranean fund, it might be called the defensive, or protective fund; for it did not really meet his idea of consistency that it should be called the Mediterranean fund, when there was no occasion for such a fund. He wished the bill to be so amended as to express the purpose for which it was intended; it might read for the purpose of providing means of defence. It might seem, if the bill passed in this way, that there was a wish to conceal its real object; not that he believed himself that this was the case.

Mr. G. W. CAMPBELL was not particularly attached to the words, in reviving and continuing these duties. The question now proposed to the House, had twice at former sessions been before it. This section was continued in 1806, by a law in nearly the same words as that now before the House. At that time it had been objected, that the objects of the original law being answered, it was unnecessary to continue it in the same form. The House then did, and perhaps now would think proper to continue the same phraseology in the law. Having been twice before continued in this manner, he saw no reason why it should not now be continued in the same form.

After some desultory debate on this motion, in which Messrs. DANA, QUINCY, UPHAM, and LYON, supported the motion, and Messrs. W. ALSTON, CROWNINSHIELD, and G. W. CAMPBELL, opposed it,

Mr. SMILIE observed that this was a long debate on a very immaterial point; it reminded him of a passage in Tristram Shandy. When the child was born, a long debate was held, whether it should be called Tristram, or Trismegistus.

The amendment offered by Mr. DANA was negatived.

The amendment offered by Mr. CAMPBELL was agreed to.

Mr. CLARK moved to amend the bill by inserting, after the words "continued in force," the words "from and after the first day of February next." The reason why he made this motion was, that the news of the passage of this bill could not arrive at New Orleans before that day. Cargoes might have been received and sold, and bonds given for the amount of duties, and after having sold the cargoes the importers would be called upon for two and a half per cent. duty. It would be unjust that the law should affect one portion of the people more than another; he therefore hoped a day would be fixed on which the law should go into operation in every part of the United States.

Mr. QUINCY thought as the law at present stood it had an *ex post facto* operation in those ports at a distance from the seat of Government. For, from the expiration of the duty, a consequent reduction in price would be made by the importing merchant; and if he were afterwards called upon to pay the two and a half per cent. it would be a great loss to him.

Mr. G. W. CAMPBELL said the gentleman appeared to have misunderstood the law; for goods would not be liable to duty imported between the expiration of the law and the time of reviving it.

After some observations from Mr. DANA in favor of the amendment, and Mr. W. ALSTON against it, it was negatived 49 to 25.

Mr. QUINCY moved to insert, in place of the amendment just negatived, "from the time of notice of this act being given at the respective custom-houses throughout the United States."

Mr. CROWNINSHIELD advocated this amendment; and Messrs. BLACKLEDGE, DURELL, VAN HORNE, and PITKIN, opposed it.

Mr. QUINCY withdrew his amendment, and substituted "from the last day of January instant."

Messrs. DANA, QUINCY, and CROWNINSHIELD, advocated this motion, and Messrs. THOMAS, McCREERY, and G. W. CAMPBELL, opposed it; and it was negatived 51 to 24.

The Committee then rose and reported the bill with the amendment, which was concurred in by the House.

A motion made that the bill be read a third time to-morrow, was negatived—ayes 20.

The same motion for to-day was agreed to without a division: and the bill was subsequently read the third time and passed.

SALARIES OF OFFICERS.

The House took up for consideration the report of the Committee of the Whole on the bill for continuing in force for a limited time the act fixing the salaries of certain officers of the United States.

Mr. STANFORD moved that the bill should be recommitted to a committee, with instructions to report a general bill on the subject of salaries.

Mr. RANDOLPH asked if a motion for postponement would now be in order.

The SPEAKER said it would, when the motion now under consideration was disposed of.

Mr. STANFORD withdrew his motion, and Mr. RANDOLPH moved to postpone the consideration of the bill indefinitely.

A debate arose on this motion, in which Messrs. RANDOLPH, LIVERMORE, and LYON, advocated the motion, and Messrs. G. W. CAMPBELL, FISK, W. ALSTON, SLOAN, LOVE, and MASTERS, opposed the motion.

Mr. RANDOLPH varied his motion, so as to postpone it till the first Monday in March, instead of indefinitely.

Mr. Bibb amended the motion (Mr. Randolph agreeing) to the first Monday in February.

This motion was supported by Messrs. Quincy, and Gardner, and opposed by Messrs. W. Alston, Southard, Holland, and Chandler, and negatived—yeas 40, nays 63.

Mr. Randolph moved that the bill be recommitted to the committee by whom it was reported.

This motion was supported by Messrs. Stanford, and Van Horne, and opposed by Messrs. Holland, W. Alston, G. W. Campbell, and Rhea, and was negatived without a division.

The bill was then ordered to a third reading tomorrow, without a division.

Thursday, January 7.

Mr. Southard presented to the House two resolutions of the Legislature of the State of New Jersey, relative to a uniform standard of weights and measures for the United States. The resolutions were read: Whereupon, a motion was made by Mr. Southard, that the House do come to the following resolution:

Resolved, That a committee be appointed to inquire into the propriety of establishing, by law, a standard whereby all weights and measures in common use within the United States may be fixed with uniformity and precision; and that they have leave to report by bill, or otherwise.

And on the question being taken thereupon, it was resolved in the affirmative.

Ordered, That Mr. Southard, Mr. Burwell, Mr. Dana, Mr. Bacon, and Mr. Smelt, be appointed a committee, pursuant to the said resolution.

Mr. Jeremiah Morrow presented a petition of sundry purchasers of public lands within the State of Ohio, praying such a modification of the laws relating to the sale of lands, the property of the United States, as may enable the petitioners and other settlers within the said State to make payments without the inconveniences and losses to which they will otherwise be subjected.—Referred to the Committee on the Public Lands.

Mr. Jeremiah Morrow presented a petition of sundry inhabitants of the county of Dearborn, in the Indiana Territory of the United States, stating their disapprobation of a law passed by the Legislature of the said Territory, "for the regulation of negroes," by which slavery is, in the opinion of the petitioners, much more established than what is consistent with the ordinance of Congress, of the thirteenth of July, one thousand seven hundred and eighty-seven: and praying that the boundaries of the State of Ohio may be so extended as to include the county of Dearborn, aforesaid.—Referred to Mr. Jeremiah Morrow, Mr. Goldsborough, Mr. Milnor, Mr John Smith, and Mr. Seaver; to examine and report their opinion thereupon to the House.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act supplementary to an act, entitled 'An act for fortifying the ports and harbors of the United States, and for building gunboats:" Whereupon,

Resolved, That this House do agree to the said amendments.

CREDIT FOR DUTIES.

Mr. Dana proposed for consideration the following resolution.

Resolved, That the Committee of Commerce and Manufactures be instructed to inquire into the propriety of allowing an extension of credit during the continuance of the existing embargo, for duties secured on imported goods or merchandise which might otherwise be exported for the benefit of drawback according to law, in case such goods or merchandise shall be deposited with the collectors of the customs respectively in pledge, for satisfying such duties, with charges of safekeeping.

Mr. D. said it would be seen at once that this resolution proposed to leave the regular collection of the ordinary revenue untouched, and only affect goods not intended to remain in the country. If merchants deposited their goods with the collectors in pledge for the duties, it was certain that they could not be sold; if they meant to sell them, they must be taken out of possession of the collectors, and therefore their deposite would be full security that they were not to be sold. The duties liable to drawback in one year amounted to nine or ten millions of dollars; and if the merchants were compelled to pay these duties to the Government without the privilege of exporting the goods on which these duties were paid, they were in fact compelled to advance so much money without receiving any interest.

Mr. Van Horne said, if he understood the tendency of the proposition now before the House, it would have the effect to look up in the warehouses of our collectors a quantity of produce that would otherwise be brought into market. He would ask whether at this time, when the produce of the planters and farmers of this country could not be sold, it was proper to do any act which could have the effect to raise the price of imported articles? Was it proper to suspend the payment of any sums of money which might become due to the United States from our merchants, when the planters and farmers would be compelled by process from our courts to discharge the debts due by them? He did not wish to overrate the pressure of the present crisis, but he could say, and believed that it was generally admitted, that the measures adopted called upon the patriotism of our citizens for their support. He did hope that the merchants of this country would cheerfully bear their due proportion of the difficulty of the present crisis. He did not pretend to understand much of mercantile transactions, but if the measure now proposed would have a tendency to induce our merchants to hold up for exportation (when the embargo should be taken off) foreign produce which would otherwise be brought into market, and the price of such articles thereby be lessened, he was opposed to the measure.

Mr. Marion said, it would be recollected that when the bill supplementary to the act laying an embargo was before this House, a proposition somewhat similar to this had been submitted, but

on a broader ground. It was then objected to because it might embarrass our financial affairs, and it was also said that it might be acted on hereafter. The proposition now submitted was on a subject worthy of inquiry and of being granted, and would operate no embarrassment on our finances. The merchant who imported goods into this country for re-exportation, depended upon the debentures for paying the duties upon the articles entitled to drawback. If gentleman recollected that in most cases the duties amounted to one fifth or more of the whole cost and charges, they would perceive the great loss which would accrue to the merchant if the time allowed for paying duties as well as the time for exportation were not extended. The merchants would suffer themselves to be sued for their bonds given for those articles which they meant to export, in hopes the embargo would expire before the money could be recovered; in that case, by paying their bonds and immediately exporting, they would receive debentures payable in fifteen days after date. If the indulgence in this case were not granted, and the bonds were paid as they became due, the only advantage to the Government that could possibly accrue would be that the Treasury would have the use of that money for a short time, to be repaid soon after the embargo was taken off, and as that money was not calculated in the estimate of our financial resources it was not probable that it would be used. When the embargo was laid in the year '94, a similar indulgence was granted in regard to the three great articles, indigo, sugar, and coffee, which then constituted the principal articles of foreign growth exported for drawback. The United States had not then long enjoyed a free trade to the West Indies, and our warehouses were full of the rich productions of that part of the world. At that time, although the embargo was continued but two months, yet he believed the merchants were allowed an extension of four months on the time for the payment of their bonds given on the importation of the three articles abovementioned, viz: indigo, sugar, and coffee. He spoke from memory, not having an opportunity of recurring to the law.

After some observations in favor of the motion by Messrs. QUINCY and LIVERMORE, the resolution was adopted without a division.

GENERAL WILKINSON.

Mr. RANDOLPH having moved the consideration of his resolution—

Mr. BURWELL offered the following resolution, which he thought ought to be adopted before the original resolution was again considered:

Resolved, That Mr. John Randolph, a Representative in Congress, from the State of Virginia, and Mr. Daniel Clark, Delegate from the Territory of Orleans, be requested to lay upon the Clerk's table, all papers or other information in their possession "in relation to the conduct of Brigadier General James Wilkinson, while in the service of the United States, in corruptly receiving money from the Government or agents of Spain."

Mr. RANDOLPH withdrew his motion to make way for the consideration of this resolution; and Mr. BURWELL moved the adoption of the above resolution. He was not conversant with the form which might be proper in such a resolution; if there was any error in it, he should be obliged to gentlemen to correct it. He had incorporated in this resolution the terms of the original resolution, offered by the gentleman from Virginia. The object proposed by this resolution was, that the evidence in the power of these gentlemen should be laid upon the table for the inspection of other gentlemen. Another object was, that as it had been said that they were unwilling to hear what the gentleman from Orleans had to state, he for one wished to show that he was anxious that the testimony of that gentleman might be laid upon the table, that the House might know what it was. If it was injurious to the character of the officer implicated, let it be known to the nation; if not, let the fact be known. The information not being disclosed, it might operate, from supposition, much more injuriously to the character of this officer than if it were in their possession. He thought it was the duty of the House to give the Delegate from Orleans an opportunity of stating all he knew.

Mr. B. said, it would be found, by the resolution which he had offered, that he had called for papers exclusively. If anything given to the House were to be used as testimony, it ought to be reduced to form, so as to be incapable of misinterpretation. If the gentleman from Orleans were in possession of any facts or personal knowledge, Mr. B. supposed it to be perfectly within the meaning of the resolution, that he should lay them upon the Clerk's table as deposition, or in any form that he should think proper.

Mr. B. had not changed his opinion since he spoke last. While he thought that it was due to the nation and to the character implicated that an inquiry should be made, he draughted this resolution that the nation might see fully and fairly the grounds on which the House should request an inquiry. He had before expressed his hostility to delaying the business by a reference to a committee. He had understood the original resolution to be grounded on evidence from the gentlemen from Virginia and New Orleans; his object was merely to procure for the use of the House those papers which were in their possession. He had no idea of putting this business into such a train that it would take years to collect the testimony. They were not to try this person, but he wished to have evidence on which to adopt the original resolution, or some other expression of their opinion. If the resolution which he now offered should produce all the testimony in the possession of these gentlemen, the House would then be able to take some definitive step, and there would be an end of the resolution. His only wish on this subject was for a fair, candid, and impartial investigation.

Mr. RANDOLPH had no doubt that this motion of his friend from Virginia was intended to produce a very different result from that which must ensue from its adoption. The very manner in

which the gentleman had met his resolution would dispose Mr. R. to agree to this proposition; but it might happen, and probably would be the case, as the gentleman from Orleans had laid upon the table a letter relating to the subject, that it might be the only paper in his possession which related to the subject, at the same time that the gentleman might be possessed of personal information. He might, perhaps, personally know, and might give to the House, as also could another gentleman in the House, if called upon, a list of those who were intimately acquainted with these transactions; and it would be found that this same nine thousand dollars was but a single subsidy. For himself, Mr. R. said, he had no personal information to give—it could only be expected from the gentleman from New Orleans. He would suggest an amendment to the resolution, including information, as well as papers, in the general request.

Before he sat down, he begged leave to state, that it had been his intention from the beginning, so soon as the House should have sanctioned the resolution which he had laid upon the table, and about which he had not conceived that there could be a difference of opinion, and had thought, as did the gentleman from Pennsylvania, (Mr. Smilie,) but who had changed his opinion as to the mode at least—Mr. R. hoped not as to the substance—that it should be unanimously adopted; he said, it had been his intention so soon as this had been agreed to by the House to have put every paper in his possession upon the table, that they might receive that direction which the House should choose to give them. He had no intention of withholding them. He had conceived that, being read by him in his place, being, as he pledged himself, to the best of his knowledge, and as appeared from the face of them, authentic, they were abundant ground for the adoption of the resolution, that an inquiry into this matter ought to be instituted. The resolution did not pronounce on the guilt or innocence of this person; it only declared that an inquiry ought to be had. But they were told an inquiry was now instituted; this might or might not be true; they had no official information of it. Granting it to be as stated, how did they know that the inquiry went to this object? How did they know that it might not be for some other unmilitary conduct? But, allow that it was for this very object, would any gentleman say how a court of inquiry was to coerce evidence? Could such a court commit or fine a person for contempt of summons? Many of the evidences to these facts might be military people. Mr. R. wished to know whether the mandate of a court of inquiry could bring even a sentinel from his post without an order from his superior officer? It could not; much less could it affect a member of this House, or a person from Kentucky, who, though they knew much, might be reluctant, extremely reluctant, to disclose what they knew. This court of inquiry, therefore, to all beneficial purposes, would be a mere semblance of an inquiry. Supposing the utmost zeal in the parties to probe the matter to the bottom, it was utterly impossible, from the nature of things, that they could execute that purpose.

Mr. R. confessed he had wandered from the purpose for which he rose, and asked pardon of the House for it. He then moved to amend the resolution by inserting after papers, "or other information."

Mr. Burwell acquiesced in this amendment, which is incorporated in the resolution as stated above.

Mr. Holland wished to know if the information contemplated was expected to be on oath or affidavit?

Mr. Burwell said that it was his object that it should be given on oath.

Mr. Holland said that if the object of the gentleman from Virginia was to obtain information on oath, he contended that the letters of Power or Gayoso could not be received, as they were not on oath. And if it were on oath, what was the information of Power? It had been before observed that Power had discredited himself. Would they contaminate the Clerk's table by receiving such information, or their officers by recording it? If they did they should not have his assent for it.

Mr. Love expressed himself in favor of the resolution in its present form, but was opposed to the proposition, that the statements which should be made in conformity to it, should be on oath, as he understood the gentleman from North Carolina (Mr. Holland) to wish. Mr. L. said that the first impression the original resolution had made on his mind, and which he had stated on a former day was, that the House had no right to act on the subject of it: that it contemplated an inquiry which was exclusively of Executive cognizance; he could not, therefore, consent to give the inquiry in the Legislative body, a form and mode of procedure, which would amount to a recognition of their right to act on it. That if gentlemen who stated they had information relative to a certain military character, which it was important should be known, chose to comply with the request made them by the resolution under consideration, he was willing to receive it, and transmit it at once to the proper department authorized to judge of the propriety of instituting an inquiry; but he did not want it on oath—that if on oath, it would have no greater effect with him, than on the honor of any gentleman of the House, who in any case uttered an assertion; neither mode would offer any testimony, which could in his opinion be noticed in that House; and that in either way it would alike afford the necessary clue to the proper tribunal to come at the evidence if any existed. To that tribunal, which alone was competent to act, he would offer the means of acting, if indeed they had such means; where both parties could be heard, and the question could be brought to an ultimate and efficient termination; where the prosecuted would enjoy the right secured to every man, of being confronted with his accusers, of cross-examining the witnesses introduced against him, of producing testimony in his favor, and of an impartial trial.

Let gentlemen then make a statement of any knowledge they may have on the subject of the resolution, and let that be conveyed to the proper department, and if those gentlemen who say they possess this information do not attend, where they shall be called on to give it, and where, if anywhere, it can have effect, let the consequence be on themselves. This House he hoped would throw no impediment in the way of an investigation, which shall have a fair result, but he deprecated the mode which was attempted to be pursued of an *ex parte* hearing and decision.

Gentlemen who have advocated the original resolution, had called the legislative body of the nation, a *grand inquest;* for his part, he said, he knew but one kind of grand inquest, it was that which was summoned and empanneled to aid in the administration of the laws; which was attendant on the courts properly constituted for the trial of offences; but the legislative body could not be supposed to be a grand inquest of that sort; it more resembled, in the powers the mover of the original resolution would have it exercise, a court which once had an existence, in a country said to have enjoyed a considerable share of freedom, but even there, that court had long been abolished. The court of Star Chamber, in England, Mr. L. said he alluded to, which, while it had an existence, was said to possess a kind of equitable criminal jurisdiction, deciding on the guilt or innocence of parties, according to its own conscience. It has been said, and with truth, that this was but a request, to be made to the President of the United States; but where, said Mr. L. is the right given to the House of Representatives to make this request, and so far to undertake to judge of the proper concerns of another department of the Government? The right of requesting the impeachment of a civil officer, was expressly given this body, by the Constitution, but the military officers are not within this description, and can only be brought to trial for a military offence before such a tribunal, or for a civil offence before a court of justice, and by due process of law. Mr. L. said, he would be for receiving any statements gentlemen had to make; and for transmitting them, by a simple order, without a request of any kind, to the authority which properly had jurisdiction of the subject.

Mr. SMILIE was thankful that this motion had been brought before the House; indeed it was the motion which should in his opinion have preceded everything else which had taken place; and he must confess that it was to his mind an instance of higher confidence than he had ever known in a legislative body, to proceed for two days on information read to them by one of its members. It was certainly the step proper to be first taken, to demand that those papers should be deposited on the table, and put into possession of the House; and after two days spent on the subject, they had at last got into the correct track. He would agree to this motion, and would have agreed to the motion made on the first day on which the House considered this subject, not that he conceived the House had power to act on it, but to avoid consequences which he saw would result, and which had resulted. Happy would it have been, had the resolution passed then, because they would have avoided what had fallen in the course of debate. The gentleman from Virginia had told the House that he had at least gained one part of this object; it was to prevent his gaining his object that Mr. S. wished to have decided on the resolution immediately. [Mr. RANDOLPH said he had gained one object, but it was impossible for the House or the gentleman to know what that object was; if the gentleman had any curiosity to know, he would inform him.] Mr. S. said he meant not to meddle with the private affairs of gentlemen; he meant public affairs, and would state two objects which had been attained. In the first place, this object was gained: the gentleman from Virginia, from the whole tenor of his conduct, and from his speeches, had conveyed an idea that he was fully convinced of the guilt of the officer implicated; gentlemen possessing the same sentiments with the gentleman from Virginia had profited by the opportunity to make inflammatory speeches, and to say everything they could against this character, and these speeches were taken by the stenographers and transmitted to the most remote parts of the Union as their verdict on his guilt. Was it possible, under these circumstances, that this officer should enjoy the right of a fair trial? He knew nothing of the conduct of this officer, nothing of his innocence or his guilt, but he knew him to be a citizen of the United States; and as such entitled to an impartial trial; and from that he would now be precluded by being prejudged. How tender was the law in civil and criminal prosecution! It was well known that if a man undertook to write and publish on a pending trial, he was liable to be punished for contempt of court. So careful was the law to prevent prejudgment.

Mr. S. had listened with all his power of attention to the discussion on this subject; he had heard strange doctrines delivered on this occcasion, but particularly by the gentleman from New York (Mr. GARDENIER,) who seemed to have forgotten what was the nature of our Government; he had talked of it as a Government possessing supreme power, and had supposed that there was no limit to the omnipotence of the House of Representatives. This was the amount of the gentleman's ideas. The gentleman should have recollected that this was a limited Government, and in talking on this subject, he should consider the House of Representatives as moving only in the bounds prescribed by the Constitution, and possessing no other power than they are invested with by that instrument. For what purposes were free governments instituted? For two great objects; to secure the rights of the community, and to secure the rights of the individual. It appeared to Mr. S. that in the course of the discussion of this business, one of these objects had been entirely overlooked. Gentlemen seemed to have totally forgotten the right of the individual whilst asserting the right of the community. Would gentlemen look into the Constitution, they would there

see how tender the Convention had been on this point—that personal rights were held no less sacred in that instrument than those of the community. Permit me, said he, to read this part of the Constitution, because I believe that in this case the personal rights of General Wilkinson are violated by the course now taken.

[Mr. SMILIE then read those articles of the Constitution securing the life, liberty, and property of the citizen, and guaranteeing an impartial trial to every person accused.]

Mr. S. said he read these to show that by the Constitution the rights of the individual were as well secured, and considered as important as those of the community. Now this being the case, said he, is it fair, before the person is put upon his trial, that he should go through the scorching ordeal of a discussion on his conduct in this House? Can he under such circumstances be said to enjoy the undoubted right of every citizen to a fair trial? It may be said that he is a military man; for his conduct as a military man he is answerable to a military tribunal; but as a citizen, he is subject to a trial before a court of justice; and if he is guilty of that wherewith he is now charged, there is not a doubt on my mind but he is amenable to a court of justice for his conduct.

But another object had been gained besides depreciating the man. The gentleman from New Orleans had, by a strong insinuation, impeached the conduct of the President of the United States in this business, by telling the House that he had given him the necessary warning, and that a deaf ear had been turned to the information. Thus another end had been gained. These two ends were what Mr. S. had been inclined to prevent, by an earlier decision on the subject.

With respect to the right of the House to interfere in the matter at all, he begged to be allowed a few words. He believed this information and business altogether had been improperly laid before the House. This House was not the tribunal to hear and decide on a case of this kind. It was therefore his opinion that it was the duty of the gentleman from Virginia (Mr. RANDOLPH,) instead of bringing the matter before the House, to have laid it in the first instance before the President of the United States, to whom alone General Wilkinson was answerable for his conduct as an officer of the United States. But if this course had been taken, these ends would not have been answered as they had. Whether this was the object of the gentleman, or the reason why this course had been taken, he would not say.

Mr. S. asked any gentleman in the House to point out that part of the Constitution which would authorize or even warrant the power of acting on this subject. No such power could be shown. If then there was no such power granted by the Constitutton, how could gentlemen come forward and support this doctrine? Some gentlemen had endeavored to show this power was impliedly vested in them; and one gentleman had risen to tell them that they had never doubted the right to call for papers. Mr. S. said they never had, and he hoped they never would. They had no right to papers, however, except in a case in which they had cognizance or the power of acting. If then they no power to act on any particular case, whence could flow the incidental power of acting in matters incidental to that case? From what source did they derive it? No power being given, no incidental power could exist. Thus he reasoned on this subject.

He found this authority of the House was one which had been very much discussed; and he begged leave to state a case which in some measure applied. In the fourth Congress, when the House of Representatives were upon the subject of the British Treaty, they called upon the President of the United States to lay certain papers before them—exercising a right which they undoubtedly possessed as an incidental power. A resolution thus calling for specific papers was sent to President Washington, who in a few days returned for answer, that it did not occur that these papers related to any subject under cognizance of the House. This was a clear expression of the opinion of Washington on this subject. Whether it was or was not correct he should not say; but of this Mr. S. was sure, that except where the House had cognizance, they had no right to take such a step as that now contemplated—to throw the whole weight of this House against any officer, civil or military. And let me tell you, said Mr. S., that the effects of this proceeding will, and cannot otherwise than produce a serious evil.

However, as the matter had progressed so far, although the conduct of the House had been altogether incorrect, he would now agree that these papers should be called for as proposed, and transmitted to the Executive; and he hoped the House would go no further.

Mr. MACON said, hoarse as he was, he would state to the House that the course proposed by the gentleman from Virginia, was the same which he found by the Journal had been proposed in the case of St. Clair, and that he then gave the same vote which he should give on this occasion. He was then of opinion that the House had a right to make the request. This proposition was then negatived, and a resolution adopted to appoint a committee of inquiry. Gentlemen who voted with him at that time were of the same opinion as himself. With respect to General Washington's opinion, it was well known that the House replied to his message, and stated that they were not bound to assign reasons for the call. Nor will I, said Mr. M. ever give any reason for a call upon the Executive. This is no new opinion with me, but formed so long ago as this case of St. Clair; it is not an opinion made up on the occasion, but upon conviction.

Mr. CLARK rose to correct an expression of the gentleman from Pennsylvania, who had talked of insinuations. I am unaccustomed, said Mr. C., to insinuate; what I have said, I thought I had satisfactorily explained; that the subject on which I spoke to the President did not particularly relate to the case before the House, but to certain transactions between certain people in Kentucky and the Spanish Government. I, at that time, offered

certain information and certain papers. These being refused to be received, I thought it needless to offer any name when the whole subject was not listened to.

In the present case, Mr. C. wished the House to attend to the peculiar delicacy of his situation. He was supposed to be possessed of evidence, and would be called upon to give it. He was here a solitary individual, sixteen hundred miles from his own country; it could not be expected that he had vouchers with which to support what he might testify. How could he give evidence if called upon, before a court of inquiry who had not the power to send for persons and papers? He hoped gentlemen would think of it; and if an inquiry must be had, and he must be forced to say what he knew, he hoped the House would allow him the means of substantiating what he said; would let it be before a tribunal which had power to send for persons and papers. The subject which he had laid before the President related to general cases; if particular persons were therein implicated, he could not help it. He hoped the House would consider the delicacy of his situation before they decided.

Mr. RHEA (T.) said he had attended with as much attention as he could do to the discussion on this subject, but was at a loss to know what this resolution would operate, and how the House was to act on evidence which it might produce. If a volume of testimony was the result, what could be done with it? He should suppose that every court of law or court martial would admit that testimony, however voluminous or to whatever extent. If so, why should the time of the House be taken up in canvassing a point which could answer no purpose? If he recollected aright the provisions of the Constitution, it gave this House the power of collecting evidence in cases of impeachment, and respecting its own members, and in no other cases. If there were any other cases in which the House could institute inquiry, he wished them to be shown; for until it were, he should act according to the Constitution, because he was bound to protect it, and not to depart therefrom. Holding this opinion, therefore, he did not feel disposed to give this measure his vote. The House had been told that the rights of individuals had been violated; if so, there was not a single one of those individuals but might commence suit in a court of justice, for this violation.

A recurrence to the date of the letters submitted in evidence would lead the mind to contemplate a chain of events which appeared to be connected with this matter; for it would be recollected by the House who was then President of the United States, and who had since filled that high office. If Mr. R. understood the date of those letters, they were written in February 1796. It would be recollected that under the Presidency of Washington, General Wilkinson was appointed a Brigadier General; under Mr. Adams, he became Commander-in-Chief of the troops of the United States, and he had been continued in that office under the Administration of Mr. Jefferson. It was known that on the third of March, 1796, General Washington ceased to be President, and Mr. Adams succeeded him. It appeared to Mr. R. to be wonderful that these transactions should have taken place, and General Wilkinson should have retained the confidence of these three great men. Under the venerated Washington he had been made Brigadier General, and under Mr. Adams appointed, and till this time continued Commander-in-Chief. If these charges which had been made were true, how could they remain in doubt to the present day? He had seen no evidence brought forward which could balance the confidence he felt in this man from the weight of character he possessed. Of what avail were a letter or two from Spanish Governors, when put in competition with the general character of this officer? If General Wilkinson has injured an individual, let him apply to a court of justice for a remedy of his wrongs. In the manner proposed, Mr. R. could not proceed.

The President of the United States being Commander-in-Chief, had a right to institute an inquiry. If the House therefore adopted the course proposed, and went on to institute an inquiry into the conduct of any officer of the Army, they went to prevent the proper department from investigating the subject, as it had a right to do. By the Constitution he understood the Executive of the United States to be as complete a part of the Government as the Congress, and to that department was assigned the performance of particular acts; and if it had not neglected its duty, why was this business here taken up? For no beneficial purpose that he could see. Inasmuch as General Wilkinson had not been committed by the evidence exhibited, and as what he is now he was when the present Administration came into office, Mr. R. thought the House should go no farther in the business if they even had the right, which he contended they had not; and he should therefore vote against the resolution. The question being called for, he would say no more at this time.

Mr. RANDOLPH conceived that some weight was due to the representation which had been made to the House by the gentleman from New Orleans; and if that gentleman was called upon to state what was within his knowledge on the subject, that means should be afforded him to substantiate what he might testify. It was due to the gentleman's character that means should be afforded to him of supporting his oath by corroborative testimony. The situation of that gentleman was, indeed, as he had expressed it, extremely delicate; and when they considered the weight of evidence which might be brought, and which had, indeed, in part, been produced, it must be allowed that the gentleman's representation was entitled to the candid consideration of this House. Mr. R. said, he scarcely felt himself justified, friendly as he was to the motion, in voting for it under these circumstances. He did not say that he should vote against it; but, if he voted for it, it would be with a reluctance which he had not believed it was possible for him to have felt on this

occasion. It was evident to his mind, that the course which was pursued in the year 1791, on the subject of General St. Clair's defeat, was the course which ought to have been taken in this instance. He should be told, perhaps, by the gentleman from Pennsylvania, (Mr. Smilie,) who, at the same time, contradicted his argument by the vote which he was about to give, of the incompetency of this House to make the inquiry, of their usurping the powers of the Executive, and of their interfering with matters which did not concern them, to the extreme prejudice of the citizen. Was this an ordinary case, and to be measured by the ordinary rules of common practice? Certainly not. It had been likened to cases of murder or treason. There was no similarity. In cases of murder, the relatives of the deceased would always be ready to urge a prosecution. In cases of treason, there were officers appointed as public accusers, and grand juries, whose province and duty it was to inquire into infractions of the civil law. The offence charged upon this person was not merely a military offence, but was of a peculiar nature, not merely as it regarded the act itself, but as regarded the person by whom the act was committed. He would ask gentlemen if they had ever heard, in the course of their lives, of a court martial held upon the conduct of a Commander-in-Chief? Was it held in the case of St. Clair? Such a court must be held of subaltern officers, who might be induced to put the Commander out of the way, that they might mount the ladder of promotion, or might be influenced by his former military authority over them. They must be ruled by every breath, whether real or imaginary, with every suspicion they might entertain of the disposition of the supreme power toward the individual over whom they sate in judgment. Mr. R. believed it was for this reason that no man had ever heard—at least he had not—of a court martial upon a Commander-in-Chief. Now, when he had the honor of laying before the House the resolution which brought forward this discussion, his object had not extended to a military inquiry, he had not contemplated such a thing as a military inquiry, neither would a military inquiry attain his object, which was, that the President of the United States, to whom the Commander-in-Chief was responsible, should institute an inquiry into the conduct of that officer, and that he should, after having obtained all the evidence (and, he might say, all the information) which was attainable, act as justice to the individual and to the country, but more especially as a regard to the public safety might require; and Mr. R. would go further and say, as a regard to public opinion might require. His excellent friend from North Carolina (Mr. Macon) had, a few days ago, told them that it was impossible that the people of the United States could repose confidence in the Commander-in-Chief under present circumstances; the consequence would be that the militia might not turn out under such a Commander.

In the irregular manner in which he was sensible he was addressing the House, though it was certainly not his purpose to say anything which had not a direct bearing on the question, Mr. R. said, he would make a few more observations.

They were asked for authority on which to adopt the proposed measure. Was it fair (although, in his opinion, the case of St. Clair was a case in point) in a Government like ours, scarcely twenty years of age, yet in its infancy, to ask for precedents in every case? Must there not occur, almost daily, cases novel in their nature, cases unforeseen and unprecedented? As curators of the Constitution, as persons vested with the trust of seeing the Constitution faithfully executed, they had a right to act in this and every other matter in such a manner as would, in their judgment, promote the public safety and the public good, so that they did not trench on the exclusive provinces of other departments of the Government, or on the authority of the States, or transgress the restrictions imposed upon them by the Constitution. The gentleman from Pennsylvania had quoted the Constitutional provisions touching the life and liberty of the citizen in common criminal cases. Let the gentleman, said Mr. R., take the Constitution in one hand and the rules and articles of war in the other, and see how they would agree in this sense. But, did not the gentleman himself, in quoting the Constitution, read an exception of all cases arising in the land and naval service? And, therefore, to talk of an invasion of the rights of the citizen, while the House was taking measures for the detection and exposure, and removal from office, (if guilty,) of a dangerous military character, was entirely idle. There was one motive that might be assigned for making this inquiry, which Mr. R. considered sound; which was, that, after this House should have taken such measures as they deemed the public good to require, if those departments of the Government whose business it was also to supervise the public concerns, were remiss in their duty, such conduct would be one of the strongest reasons for the proper punishment of such departments; and the power to apply this punishment rested, at least in part, with this House.

Mr. R. would suppose that the House were in possession of information, instead of Aaron Burr, the late Vice President of the United States, having conspired against our national existence, that the Commander-in-Chief was this conspirator? Suppose this case, said Mr. R., and that we were to have been put out of this House, not by Aaron Burr, but by James Wilkinson? Suppose such information were in possession of the House; should we do our duty, if instead of wasting our time in idle debate, we did not request the President instantly to cause an inquiry?

But, it seemed that the party in question had enjoyed the confidence of a long line of Presidents, and that this was one reason for supposing him innocent? Suppose him innocent, said Mr. R., that is one of the best reasons for assenting to an inquiry which is to establish that innocence. But how long had it become a principle in our Government that confidence, not only in Presidents, but in any in whom they might have confided at

any time, was to become the sole rule of action to the Legislature of the country? If they had acted on the principle of confidence, they would have said that it was equally impossible that Aaron Burr, a man who had been a Senator of the United States from the great and respectable State of New York, and who had enjoyed the important office of Vice President of the United States by an equal vote with the present President, should be guilty of the crimes laid to his charge. But this sort of reasoning did not accord with fact. Ours is not a Government of confidence, said Mr. R. It is a Government of diffidence and of suspicion, and it is only by being suspicious that it can remain a free Government. He observed that it was a wonderful revolution in human affairs that could give sanctity to, and bleach into unsullied whiteness, characters that had remained under suspicion, and strong suspicion, too, for years. When the present President of the United States first came into power, it was a question with the leading, and, he might say, ruling party, whether the Army of the United States could not be reduced, so that the highest commander should be excluded. There was a most decided majority (as the gentlemen then in Congress knew) in favor of that reduction; but, by a finesse unparalleled, perhaps, in legislative history, the disposition of that majority was eluded and evaded, and matters were suffered to stand as they now are. But, at that very session, he believed, so little was confidence the order of the day, that in order to prevent (this was not said on the floor of the House, but publicly spoken of out of doors) the embezzlement not merely of Spanish dollars but of our own, to cut off all possibility of peculation, a fixed salary was given to the Commander-in-Chief. Mr. R. said, he had then his opinions on the subject—they were not new. He was informed from a respectable source of the Government—he would not name it, but he believed it was from the same channel, that a dozen members of the House received the information—that such a step was absolutely necessary. And, at this day, after these facts were made known, should a character remain unspotted which had so long lain under odium? He knew that it had been a very general opinion with many members of the House, that, at the moment the President of the United States had put his name to that act, he would think it a matter of course to remove the officer who had compelled them, in self defence, to pass that law. Upon this subject, Mr. S. said, he felt no delicacy. In discussing the conduct of a person whom he believed, upon the very best evidence, to have been, six or eight years ago, guilty of peculation—a person against whom he had been compelled on oath to say that he believed him to be guilty of misprision of treason—he felt no hesitation. It would be mere affectation to pretend to feel any; it was out of the question. The gentleman from Pennsylvania, or any other, might say what he pleased about this person's being prejudged; but the case had been prejudged long ago; and it was impossible to proceed on it without prejudging on one side or the other. While up, as it might save trouble, and as he found some little contradiction in the public prints respecting the papers which he had submitted to the House, he would take the liberty of telling the House at what time and in what way they came into his hands. On Thursday, the day preceding Christmas day, said Mr. R., a gentleman, an utter stranger to me, gave me some information which he had conceived might be interesting to me as a private man; and, at the same time, informed me that evidence of this kind was within my reach. The purport of it was stated to me at several different times; and the day preceding that on which I submitted the matter to the consideration of the House, Power's letter was put into my hands. I immediately called upon the Secretary of the Treasury, and asked him if he knew, or if Government were apprized that there existed information of this nature? who replied, that they were not. I then requested him, inasmuch as it would be brought forward in a public way, to say nothing about it. And, on the next day, although I had seen them before, the certified copy of the ciphered letter to Gayoso, and the copy of the original of the Baron de Carondelet's letter to Captain Portell, were put into my hands, the very day on which their contents were disclosed to this House. I have nothing more to say.

Mr. MACON said, he had not intended, when he first spoke on this subject, though he might have expressed himself inaccurately, to express an opinion on the guilt of General Wilkinson. His object was to give no opinion on the subject. He had then stated as a reason why the House ought to adopt this resolution, that the observations which had fallen from the gentleman from Kentucky (Mr. JOHNSON) would have been sufficient ground for it. He wished to express no opinion on the merits or demerits of this affair.

Mr. LOVE said, his principal object in rising a second time, was to know whether he had understood the precedent, read from the Journals of a former session by the gentleman from North Carolina (Mr. MACON,) and relied on by the gentleman from Virginia, (Mr. RANDOLPH.) For if he had understood the Journals right, without intending any disrespect to either of those gentlemen, he must acknowledge that they did not in this instance, seem to have exercised the powers of discrimination, which he had supposed their minds to be endowed with. If he had heard distinctly the reading of the Journal, it stated, that a resolution had been introduced requesting the President to inquire into the causes of the defeat the American arms had sustained under General St. Clair; which was negatived by a large majority; but that, on a motion to refer that inquiry to a committee of their own body, it was agreed to. The resolution which was adopted, and is said to form the precedent for this, was nothing more than that a committee should inquire into the causes of this defeat. This, said Mr. L., was surely proper; it related to a subject which Congress might properly feel it its duty, and, for its own exculpation, to inquire into; it did not con-

template, as the original resolution in this case does, an inquiry into the conduct of any military officer, but such an inquiry as would enable Congress itself to show that the terrible defeat our armies had suffered was not attributable to any improper conduct on their part, in withholding the necessary means of victory, or the proper supplies for our army. Really, said Mr. L., the selection of this precedent seems to be an unfortunate one for those who rely on it, one which he should gladly have adduced for the very opposite purpose for which it had been adduced.

But a contradictory conduct, he said, had been attributed to those who professed a willingness to adopt the present resolution, and, at the same time, contended against the power of acting on the subject. If there was such semblance of contradiction, surely a moment's reflection would satisfy any gentleman it was not in reality so. This subject had been obtruded on the House, how properly would be hereafter judged of; they had so far entertained and acted on it, he was now willing to take such steps as would enable them to get rid of it; but the resolution he advocated the adoption of, was of a nature totally different from the one originally proposed, and contained in it no infraction of the Constitutional right of another department of the Government. The most that can be said of this is, that it may produce an unprofitable waste of our time, and that we ought only to act on it, in order to get clear of a greater evil; the other is of a dangerous kind. He said he was astonished at the manner in which this subject had been treated; instead of an attempt to reply to the objections urged against the original resolution, the House had been occupied in listening to personal invective, and general, undefined, vague charges against a military character, who had not here the power of reply; it would certainly have been more proper, and in every respect more correct, to address the understanding on the subject introduced to the consideration of Congress, and to have endeavored, at least, to answer the argument objected to the right of entertaining it.

Mr. Rowan was opposed to this resolution, not because of the extent of power which it assumed, but because it was short of the power which ought to be exercised on this occasion; nor was he opposed to inquiry, because its effect would be to place a solitary individual against a host, when, in fact, the host was in his favor. If information was necessary at all, why confine it? If necessary, why not procure all within their power? By admitting that Daniel Clark should lay on the table the information in his possession, they admitted that it was proper to have information; then why not admit all the information requisite to a clear understanding and fair decision of this question?

I have another objection, said Mr. R., to this course of proceeding: this House will have gone into a discussion on the subject of inquiry; the testimony adduced may not be relevant, and the character of the man will shine the brighter after the discussion; and why? Because testimony will have been collected? No. Because a discussion, under color of an inquiry, will have taken place without effect. It will serve only as an additional buoy to his character. Make the resolution ample; go into a full inquiry. You have power; exercise it, and you shall have my feeble support. But it was said, that there was no precedent for this case. How were precedents formed in the first instance? There must be a case on which to create them. The present case is unprecedented; and I shall not flinch from acting on it, because there is not a similar case on record.

Mr. R. contended, that it was an incidental power of this House to make an inquiry. Who makes war? This House. Who conducts it by appropriations of blood and treasure? This House. Shall it be said that we have power to make war and to support it, and not to inquire into the loyalty of our commander? It was said that the President only had a right to inquire, and that the President had confidence in him. Mr. R. said, there might be a case (he did not mean to say that it now existed) in which a President would conspire with the Commander-in-Chief against the Government; and, as the latter officer was accountable to the President only, whatever confidence they might possess in the President would be unavailing. Suppose a General treasonable; suppose a war was now to break forth, of what avail would be the responsibility of the President in this case, when contrasted with the general evil which might result? Suppose a battle was impending, by which the fate of the nation was to be decided, and the House had a suspicion that the commanding officer was disaffected, or had a disposition to injure the interest of the country, would they not inquire into the case? Certainly they would; and thus he contended that this power of inquiry was inseparably incident to the great power of making war.

But besides its residing thus in this House it resulted from the general construction of the Constitution. This officer was responsible to the President. The President's responsibility only affected his reputation; while a breach of duty in him might destroy the nation. It might be said that no such imminent danger was now to be apprehended; but General W. was Commander-in Chief, the charges were heavy, no less than for receiving money from a foreign nation with whom the United States were at war, for aught Mr. R. knew—for no person could say what their actual relation with that Power was; a negotiation had been so long pending, that its object was almost forgotten. The charge against him is of being a Spanish pensioner. The world knows (though it is a subject worthy of further inquiry) that that Power did propose to the people of the Western country a dismemberment from the Union; that she did offer to furnish $100,000 for arms, and another $100,000 for corrupting the public papers, and distributing among the people; and that all who lost commissions from their attachment to her should be indemnified for the loss. It was known that there was a Spanish Consul in the

little town of Frankfort—Argote. It was also known that sums of money were coming up the river under the care of a person who had been murdered and the money made away with. This money must have been for somebody; whether for Wilkinson or not was uncertain.

When they considered the present critical state of the Union, and that this man was Commander-in-Chief of the Army; when it was known that money had been corruptly received in the Western country, and that Wilkinson himself had received money, for what purpose it was not known, but was worthy of being inquired into; when all this was known, suppose the President were to refuse an inquiry, should this matter therefore not be inquired into? Would they after what had been said in the public prints, and in the House, trust him with the command of our army against Spain? There was to be an inquiry, it was said; but they were not told of what nature it was. If you pass this resolution, said Mr. R., the information before the House will be laid before that tribunal; they will have a color of evidence, and the result may be easily foretold. I will not express an opinion on the conduct of General Wilkinson, but I have long been under an impression of his guilt. I do not know the man; I never even saw him; but I live in a part of the country where much doubt prevails of his integrity. I have been present at an inquiry before a branch of the Legislature of Kentucky, in which much information came forth. There is no doubt, if this inquiry is entered into, it will be found that there are other men enjoying the public confidence, and triumphing in their security, who would be exposed to their country. I am, therefore, opposed to the passage of this resolution, because it would be adding another shade of doubt to the present obscurity. Something like evidence which might be produced, of no effect, would pass upon many for a solemn investigation. Either make the inquiry, or leave it with the Executive. I have no idea of stepping between in this manner, believing the Executive, taking no responsibility upon ourselves, and leaving the friends of this man to turn it to the best use to themselves.

The observations of the gentleman from Pennsylvania were inapplicable. The rights of the man would be respected, and the gentleman's quotation of the right of the *habeas corpus* would have no other effect than to remind the House that this sacred provision of the Constitution had been infringed, and no inquiry made into it. Every one regretted its prostration, and Mr. R. said he regretted that no inquiry had been made into the cause of it. He had no personal motive for wishing the conduct of Wilkinson to be investigated; he did not know him, and he hoped he might come out well; but his love to his country urged him to declare that he wanted an inquiry; the interest of the country required it. It was time that those only should enjoy confidence who fully deserved it. The public papers had long sounded these charges from one end of the continent to the other, and no inquiry had been made. A court of inquiry, indeed, was said to be called; but we all know what will be the result of an inquiry, except we conduct it so as to reach the great point.

He should, therefore, vote against the resolution; not that he doubted the power of the House, but because it was not such an exercise of that power as they ought to make, and would only operate as a further illusion cast over circumstances into which they ought thoroughly to inquire.

Mr. ALSTON said he had at first felt some doubts on this subject; but, the resolution had been so modified as to relieve the gentleman from New Orleans from any delicacy which he might feel upon the matter; for although he was to be requested, it was discretionary with him whether he would communicate or not; and, therefore, although he was a solitary individual, 1,600 miles from home, if he placed himself in a critical situation, he could not blame the House for it. When the resolution was first submitted to the House, Mr. A. doubted the propriety of making the request. What had been since said of the subject? Why, that if they refused to inquire, they refused to criminate an higher department, of whom the House alone had cognizance. If there are more than two members in the House who possess information, let them bring it forward, and let the House apply the corrective. We have the power and let us use it. [Mr. ROWAN said he had not alluded to any of the departments of Government particularly. He had meant Judge Innes.] Mr. A. said that it was said by withholding an inquiry, they might seek an investigation into the conduct of a higher department. No particular department had been mentioned, but such was the expression, and every gentleman was left to draw his inference.

Mr. A. had no objection to information. Let it come, and let us have our eyes upon it; but the world will know, that when it comes upon our table, it is not evidence. However strong it might be, persons would not be convicted till they went through a trial.

With the character of Wilkinson, in examining this evidence, they had certainly nothing to do; the discussion on it was totally irrelevant to the question before the House. Mr. A. had nothing to do with the General's character; he did not know him in a legislative capacity, and scarcely as a private gentleman. He did not believe there were any gentlemen on the floor who wished to prevent an inquiry; but it was an old maxim, and not a bad one: "Give the devil his due." Were they trying him, they might make inflammatory speeches on his character; but when they were merely calling for evidence, was it right or liberal to prostrate his character at their feet? When they got possession of the information which the resolution on the table contemplated, the House would be competent to decide what direction should be given to the testimony. He had no doubt they would do their duty. They would have it in their power to transmit the testimony to any proper authority. Let them do so. Whether General Wilkinson had ever been a Spanish

pensioner, or engaged in commercial transactions or not, or whether he had or had not violated the Constitution, were not questions now before the House, except they wished by their speeches to crush the man before his trial. This might be a purpose in view, for aught he knew, in the present discussion. Whether it was, or was not, he would not attempt to decide. But, as the honor of the nation is concerned, let the characters implicated stand or fall on their own bottom. Let them neither be crushed nor bolstered up by the manner in which this House shall act.

Mr. BACON said, as he should vote on this question in the same way as the gentleman from Kentucky on his left, but from very different reasons from those assigned by that gentleman, he should state his reasons for the vote which he was about to give. It did not appear strange to him that gentlemen should be embarrassed in giving a vote on this question, for he declared that he did not know that any subject had been agitated since he had a seat in this House upon which he felt so much doubt; but upon a consideration of the whole ground, he was induced to vote against the resolution; and it was because that an inquiry into which this might lead, and which the original resolution proposed, was going into a thing out of their own jurisdiction, and with which they had no right to interfere. Why had they more right to interfere in this than to call upon the Judges of the Supreme Court to institute an inquiry into the conduct of their chief clerk? Or why any more right than the President had to call upon this House to inquire into the conduct of its clerk? And as to the arguments of the gentleman from Kentucky with respect to the abuse of the power which the Executive Department of the Government might commit, it had no bearing on the question—it was no argument in this case. The President might, in case of war, retain a treasonable man as Commander-in-chief; so might a majority of this House be possibly corrupted. But because an abuse of power might take place on either side, was it any argument that they should interfere with the power of the Executive, or he with theirs? It might be, that, to save the Republic, the people themselves might interfere; this would be a case in which all Constitutional power must give way. As, therefore, he was of opinion that this body had no jurisdiction upon the subject-matter, and as it seemed to be thought that if they had no jurisdiction on the main question, they possessed no incidental power, and as he believed they had not a right themselves to inquire, he might believe that they had not a right to take any step to procure evidence.

Though these reasons had great weight with him, he would state one or two which somewhat influenced him the other way. The course which he had adopted was calculated to excite suspicions in the public mind; and though this was no question of confidence or diffidence in the Executive, yet, when they were called upon to vote on *ex parte* evidence, and the gentlemen who had been called upon declined stating (except partially) what they knew from the policy of the case, the House might go so far beyond the Constitutional limits as to let their evidence go for the whole it was worth; for, by taking a part, it had become necessary to take the whole.

Though these reasons had, as he had said before, some weight on his mind, it seemed to him to be the safest way, in the present state of their proceedings, to stop where they were. It was said, and indeed it must be so, that if they called upon one they might call upon every person in the House who possessed information. What shall we do, said he? Erect ourselves into a special court to collect evidence over which we have no jurisdiction? Assuredly the House cannot! These were the reasons, then, which would influence him to vote against the resolution; in doing which, however, he should not be influenced by any question of delicacy towards the gentleman from New Orleans, and must say that he was a little surprised at the gentleman from Virginia (Mr. RANDOLPH) feeling such extreme delicacy towards him. Were not the House requested to place their power over the gentleman from New Orleans, by doing which they would obtain important information? The gentleman from New Orleans had been introduced by the gentleman from Virginia as possessing great information on this subject. After the gentleman from Virginia had given this information to the House, the gentleman from New Orleans had not been compelled to come forward; but he had voluntarily come forward and given his evidence in part. And, after this, was there any indelicacy in requesting him to give the whole? Mr. B. thought not. He thought there was delicacy due to others in this case, and which would operate as an inducement to Mr. B. to call forth all the evidence, as they had already got part of it. But he could not think that they could enter into this business without going beyond the limits of the Constitution. He should stop here, for he knew where he was; but if he went further he should transgress the Constitutional metes, and should not be able to tell on what footing he stood.

Mr. MARION was one of those who thought the House had no power to compel testimony, though he had no doubt that they had a right to request the President to cause an inquiry into the conduct of any officer; that they had a right to do it upon rumor alone, if it had acquired such weight as to lessen the confidence of the public in the person involved. The representation made by a gentleman from Kentucky (Mr. JOHNSON) a few days ago, and by another gentleman from the same State (Mr. ROWAN) on this day, would have been sufficient to convince Mr. M. that an inquiry ought to be made. Did the resolution go no farther than to request the gentleman from Virginia to lay on the table those papers which he had read, he should have no objection to it, because they had been voluntarily offered to the House, and were the basis on which the main resolution had been founded; but he would not go farther, and call upon the Delegate from New Orleans for his information upon the subject. If a man had

already been called upon to give testimony, and had refused to give all that might have been necessary, Mr. M. might have voted that he should be called upon to give the remainder; but for the House in the first place to set about collecting testimony to send to a court, appeared to him incorrect. He should be afraid that other cases—extraordinary cases—might hereafter arise, in which this might be drawn into precedent, if adopted. If no person paid more respect to precedent than he did, he should not fear; but precedents had this day been read in the case of St. Clair, and hereafter this case might be quoted. Therefore, as the subject was susceptible of division, he should wish the resolution to be divided. That the part which respected the Delegate from Orleans might be stricken out, so as only to request the gentleman from Virginia to lay upon the table the papers which he read the other day.

Mr. GARDENIER confessed that, however he admired the feelings of delicacy which had been displayed, they did not strike him as having force in this case. The House might adopt the resolution now under consideration, and as the information might be given, they might afterwards take such steps as it might warrant. The gentleman from Kentucky had objected to this resolution, and given an argument against it, in itself very forcible, but not applicable to the resolution under consideration. The House was now about to possess itself of such information as might be immediately wanted. It did not follow, that by making themselves acquainted with facts they prevented themselves from taking such other and stronger steps as they might hereafter think proper. There was no ground for the opposition made by the gentleman from Kentucky; for, certainly, after hearing strong and additional testimony, the House would not be less disposed to adopt strong measures than they were now. The hearing, therefore, was essential. The more information they had, and the more it went to criminate General Wilkinson, the more the House would feel it. He thought the resolution was, therefore, proper altogether; it was getting at the same object which he himself had proposed to accomplish by his former motion for a reference; and, thinking this to be the proper course to be pursued, he should vote for it.

Mr. SMILIE said that it was a little strange, after all that had been heard in the House, that gentlemen would persist in treating this subject as though there were persons in the House averse to an inquiry. He had not heard from any man in the House a sentiment of that kind; and he was sure that no one was more anxious for such an inquiry than he was himself; for he was certain, from the present situation of affairs, that an inquiry must be had. He had heard doctrines to-day from other gentlemen, which he had heard at other times from a gentleman from New York (Mr. GARDENIER); and he was not a little surprised at the opinion advanced by the gentleman from Kentucky, (Mr. ROWAN,) that there were no limits to the power of the House but the public good. We are asked, said Mr. S., are we to suffer our country to be ruined, because *we* will not step forward and relieve it? Great God! is it possible that we have forgot that we act under a limited Government.

The gentleman had contended that they did possess such power. Mr. S. was in hopes, while the gentleman was up, that he would have laid his finger on some part of the Constitution by which he could support his assertion. The gentleman supposed that a power existed in this House to take the matters belonging to the superintendence of other departments into its own hands. Where did these powers exist? The gentleman had shown no authority to prove it. It was impossible that any Government could exist in such a situation. Was the gentleman aware how far his own doctrine would go? Was he not aware that if corruption was probable, it might exist in the Legislative branch of Government as well as any other? Had it not been the case in other Governments? Had they not seen the Senate of an European nation (Sweden) the sport of British and of French gold? Had they not seen a Legislature of one of these States so corrupt that but one man was found of integrity sufficient to resist bribery? And might it not be the case in this as well as in any other Legislature? Every branch of this Government was responsible to the people, and the Constitution had provided the regular mode in which their conduct was to be called in question, judged and punished; and in that mode, and in that alone, could they act. Adopt, said he, the principle that any one part of the Government can take a range not warranted by the Constitution, and I can see no safety for any man. When I mentioned the habeas corpus, it was to show how tender the Convention had been of the rights of individuals, and not for the purpose which the gentleman had supposed; the friends of Mr. Burr might feel this great sensibility, but no others could. In saying so, he did not mean to allude to any gentleman within those walls. Those officers of the Government who departed from the line of the Constitution, were responsible to the Government, and subject to prosecution; and if they could not show that the step which they took was absolutely and imposingly required for the safety of the country, let them suffer.

As the gentleman had gone into suppositions, Mr. S. would also mention a case. Suppose this House was so corrupt that a majority of them were pensioned by foreign nations, and were to refuse supplies in time of need. Where was the remedy? Could any other Department, as a Department, interfere to correct the House of Representatives? The gentleman would not say this, he presumed. If, then, no other Department had a right to interfere with the House, they certainly had no right to interfere with the functions of the Executive or any other Department of the Government.

Why should they take this blind step? Had any gentleman pretended to say that the President, whose province it was to take cognizance of the conduct of the officers whom he had appointed,

had neglected his duty? The gentleman from Kentucky, said he, has indeed insinuated that the court of inquiry will not do its duty, and therefore we ought to appoint a court. I cannot understand the gentleman's observations in any other way. I never heard such a doctrine before advanced; I believe the longer the subject is considered, and the farther we go into, it the more we shall see the danger of this doctrine: if the House has a power to throw its weight into a prosecution against an individual, there is no safety for any man in the country. I cannot see what may be my own fate, for I have been accused on this floor of holding the same language as a French agent. Well, let any man bring forward a few letters and papers, call them important information, and institute an inquiry—what will become of me? I might be expelled, have the whole nation prejudiced against me by the inflammatory speeches against my character, and then turned over to a prosecution in a court of justice to be punished. This would be my situation; and, although perfectly innocent, I might suffer, from the prejudice against me in consequence of the proceedings of the House. When I mention this possibility, it is necessary for me, though it has certainly nothing to do with the question at present under discussion, yet in justice to my own character, to state what I had said to elicit this aspersion. The observation was—that, as Great Britain was distressing us beyond measure, claiming rights contrary to the law of nations, the absolute dominion of the sea, the effects of which we all knew; and that, as France was contending for the freedom of the seas, these two nations were at least entitled to equal justice from us. This was the expression, and the House will judge whether anything which I said would warrant such an observation.

There is nothing I more earnestly wish, than that the gentleman will give me an opportunity, in the presence of this House, to compare my public character with his; and I will ask but two years of his political life upon which to make my observations; and I will lay open to him the whole of my political conduct, and subject it to his scrutiny, and it will then be seen which of us has evinced the strongest attachment to any foreign nation.

Mr. Rowan said, as to the charge of Burrism, the measures which he had taken in the Western country to suppress it were well known; and it was also known that he had refused the offer of a large sum to defend Burr on his trial there; he could not therefore be charged with being under the influence of Burrism. Neither had he argued that this House had an unlimited or unbounded power; he had urged the power of inquiry as incidental to that provision of the Constitution which gave this House the exclusive control as to raising armies and making war. He was as great an enemy as any gentleman to dragging in the departments, and was not unapprized of the deference due from one department to the other; but should be extremely sorry if a department in which he was concerned should neglect such an important inquiry.

For one Power to pension the Commander-in-chief of another, was known to be cause for war. It was stated that Spain had pensioned the Commander-in-chief of the American Army. It remained, therefore, for this House to say whether Spain had done an act which was cause for war; and from the general Constitutional provisions, therefore, proper to inquire, and on that ground they had power to make the inquiry.

It seemed to him important that an inquiry should be made at this time. It was generally supposed, that we were on the eve of war with France and Spain, or with Great Britain, in case of which it would be necessary to increase the army. The Commander-in-chief was said to be corrupt. Would the House vote money to support an army to serve under a commander under this imputation? Should the best blood of the nation be hazarded by such a circumstance as this? All their preparations of defence were unnecessary except they ascertained his fidelity or defection. Mr. R. did not mean to say that this man was guilty; he might be innocent: but notorious facts spoke strongly against him. It seemed astonishing that an inquiry had not heretofore been made. A court of inquiry was indeed now ordered: he did not know what might be the power of this tribunal, or how it might be disposed; but the suggestion of the gentleman from Virginia, as to its being composed of subaltern officers, had great weight on his mind. He was, therefore, not for confining the power of making inquiry to any particular department, but he was for deducing from the fitness of things a power in this House to make the inquiry.

Mr. Witherell had not heard any reluctance expressed on any side of the House to an inquiry into the character of the person implicated in the resolution, and he would not suffer himself to doubt of it. The only difficulty seemed to be as to what course was proper to be pursued. The different constructions of the Constitution seemed to have distracted the House as to what course ought to be pursued on the one hand or on the other. In a debate on a former day the House were informed that a court had been instituted for the purpose contemplated by the resolution. If they all believe that an inquiry ought to be made, the question was narrowed down to a single point, whether the President, in ordering this inquiry, had gone out of his course? Perhaps this House had better pursue this business and send notice to the President that he had stepped out of his course, and that they would take it up. After a recurrence to the experience of every man who had ever snapped a pistol, or bitten the end of a cartridge, he would submit to their good sense to whose province this inquiry most properly belonged; whether to the Executive or to this branch of the Government. If it belonged of right to the Executive, all that they had to was, to say that they had been mistaken, and were happy to find themselves superseded by the proper branch. He did not believe, after the long and spirited debate which had taken place, that any other decision could be given. He should

be satisfied, however, if they could here stop the subject, of which he did not believe they ever had cognizance. He should, therefore, vote against the resolution and against every other proposition on the subject, believing that every Department of the Government should act within its own jurisdiction.

Mr. RHEA, of Tennessee, said if he understood the gentleman from Kentucky correctly, he had said that it was cause for war, for one Power to corrupt the Commander-in-chief of another. Mr. R. observed that when he was up before, on this subject, he had stated what he knew to be correct—that Wilkinson was created a Brigadier General under General Washington, and appointed Commander-in-chief under President Adams. This pension was charged to have been received during the Administration of Washington: of course General Wilkinson was not Commander-in-chief, but General Wayne was. As the whole argument of the gentleman from Kentucky in favor of the power of this House was bottomed upon the pension's having been given to the Commander-in-chief, Mr. R. just suggested this fact as a complete answer.

The question having been put on the resolution calling upon Messrs. RANDOLPH and CLARK for information, was then decided by yeas and nays—yeas 90, nays 19, as follows:

YEAS—Willis Alston, junior, Burwell Bassett, William W. Bibb, Thomas Blount, John Boyle, William A. Burwell, William Butler, John Campbell, Peter Carlton, Epaphroditus Champion, Martin Chittenden, Matthew Clay, Howell Cobb, Jacob Crowninshield, Richard Cutts, John Davenport, jun., John Dawson, Josiah Deane, Joseph Desha, Daniel M. Durell, James Elliot, William Ely, James Fisk, Meshack Franklin, Barent Gardenier, Francis Gardner, James M. Garnett, Charles Goldsborough, Edwin Gray, Isaiah L. Green, John Harris, William Helms, William Hoge, David Holmes, Benjamin Howard, Reuben Humphreys, Robert Jenkins, Richard M. Johnson, Walter Jones, Thomas Kenan, William Kirkpatrick, Joseph Lewis, jun., Edward St. Loe Livermore, Edward Lloyd, John Love, Matthew Lyon, Nathaniel Macon, Josiah Masters, William McCreery, William Milnor, Daniel Montgomery, jun., Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Jonathan O. Mosely, Gurdon S. Mumford, Thomas Newton, Timothy Pitkin, jun., John Porter, Josiah Quincy, John Randolph, John Rea of Pennsylvania, Jacob Richards, Samuel Riker, John Russell, Ebenezer Seaver, Dennis Smelt, John Smilie, Samuel Smith, John Smith, Henry Southard, Richard Stanford, Lewis B. Sturges, Peter Swart, Samuel Taggart, John Taylor, David Thomas, John Thompson, Abram Trigg, George M. Troup, Jabez Upham, James I. Van Allen, Nicholas Van Dyke, Archibald Van Horne, Killian K. Van Rensselaer, Jesse Wharton, Isaac Wilbour, Marmaduke Williams, Alexander Wilson, and Richard Winn.

NAYS—Ezekiel Bacon, Joseph Barker, Robert Brown, Joseph Calhoun, William Findley, John Heister, James Holland, Daniel Ilsley, John Lambert, Robert Marion, Roger Nelson, John Pugh, John Rhea of Tennessee, Matthias Richards, John Rowan, James Sloan, Jedediah K. Smith, Robert Whitehill, and James Witherell.

On motion, the House adjourned.

FRIDAY, January 8.

The SPEAKER laid before the House a letter from Thomas Glen, stating himself to be a native citizen of Wilmington, in North Carolina, and requesting the aid and patronage of Congress to release him from on board one of the ships belonging to the King of Great Britain, now lying in Hampton Roads, near the entrance of the Bay of Chesapeake.

The said letter was read: Whereupon, a motion was made by Mr. CROWNINSHIELD, that the House do come to the following resolution:

Resolved, That the letter addressed to the Speaker of the House of Representatives by Thomas Glen, who alleges himself to be an Amercan citizen, now serving against his inclination in the British frigate Statira, lying in Hampton Roads, be referred to the Secretary of State, that inquiry may be made as to the facts stated therein, with a view to his liberation:

And the question being taken thereupon, it was resolved in the affirmative.

An engrossed bill to continue in force, for a limited time, an act, entitled "An act continuing, for a limited time, the salaries of the officers of Government therein mentioned," was read the third time, and passed.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act supplementary to the act entitled 'An act laying an embargo on all ships and vessels in the ports and harbors of the United States," with several amendments; to which they desire the concurrence of this House.

On motion of Mr. CROWNINSHIELD,

Ordered, That the Committee of the Whole House to whom was referred the resolution authorizing the establishment of telegraphs, be discharged from the consideration thereof, and that the said resolution be referred to the committee to whom was referred the petition of Jonathan Grout.

A Message was received from the President of the United States enclosing the annual report of the Director of the Mint; which was referred to a select committee, composed of Messrs. W. ALSTON, UPHAM, MARION, J. RICHARDS, and G. W. CAMPBELL, with instruction to report thereon by bill or bills.

A Message was received from the President enclosing an account of the expenditures from the contingent fund for 1807; by which it appears that of the sum of $18,012 50, which remained unexpended at the close of the year 1806, $8,731 11 have been placed in the hands of the Attorney General of the United States, to enable him to defray sundry expenses incident to the prosecution of Aaron Burr and his accomplices for treasons alleged to have been committed by them, and the unexpended balance, of $9,275 39, is now carried to the credit of the surplus fund. The Message was read and ordered to lie on the table.

The House took up for consideration the amendments by the Senate to the bill to extend the right of suffrage in the Mississippi Territory.

One amendment to this bill requires an equitable freehold qualification for a voter. On this amendment some discussion took place; but it was agreed to. Messrs. ALSTON and RHEA opposed it, on the ground that the House should pass no law permitting the contraction of the principle of universal suffrage. Messrs. POINDEXTER, HOLLAND, SLOAN, and SMILIE, urged an agreement to it, as without it the bill would not probably be passed by the other branch of the Legislature. Mr. BIBB opposed the amendment, as he should oppose every amendment made to the bill, lest he might be thought to sanction it.

Mr. TROUP said it was perfectly immaterial what qualifications were enacted, and he should not oppose this, as the compact between the United States and Georgia was violated by legislating on this subject in any shape; they need not strain at gnats when they had swallowed the camel.

The amendments were agreed to.

EMBARGO.

Mr. MASTERS moved, that the House take up the amendments this day received from the Senate, to the bill supplementary to the act laying an embargo.

Mr. QUINCY moved, that the consideration of this subject be postponed till Monday next. Negatived—ayes 20.

Mr. QUINCY then moved a postponement till tomorrow. As he did insist, that the people should know who were in the habit of hurrying through business without consideration, he called for the yeas and nays upon the motion.

Mr. NEWTON said, that he too wished for the yeas and nays, that the people might know who were in the habit of delaying business. That gentleman had taken up at least as great a portion of time in the discussion of the bill as any gentleman in the House. He hoped the House would not be trifled with in this way.

The motion for postponement was advocated by Messrs. QUINCY, LIVERMORE, UPHAM, BARKER, DANA, LYON, and ELY, on the ground that no time had been allowed to consider the amendments; and opposed by Messrs. TAYLOR, NEWTON, BASSETT, and MASTERS, for the reason that it was necessary to pass on this bill with all despatch to secure more firmly the provisions of the former law—and negatived by yeas and nays—58, to 29, as follows:

YEAS—Evan Alexander, Joseph Barker, William Blackledge, John Campbell, Peter Carlton, Epaphroditus Champion, Martin Chittenden, Samuel W. Dana, John Davenport, jr., William Ely, Francis Gardner, Charles Goldsborough, Edwin Gray, William Hoge, Reuben Humphreys, Robert Jenkins, William Kirkpatrick, John Lambert, Joseph Lewis, jun., Edward St. Loe Livermore, Matthew Lyon, Nathaniel Macon, William Milnor, Jonathan O. Mosely, Timothy Pitkin, jr., Josiah Quincy, John Rowan, John Russell, Dennis Smelt, Samuel Smith, Henry Southard, Richard Stanford, William Stedman, Lewis B. Sturges, Samuel Taggart, Jabez Upham, Nicholas Van Dyke, Archibald Van Horne, and Killian K. Van Rensselaer—29.

NAYS—Willis Alston, jun., Burwell Bassett, William W. Bibb, Thomas Blount, John Boyle, Robert Brown, William Butler, Joseph Calhoun, John Chandler, Matthew Clay, Howell Cobb, Richard Cutts, John Dawson, Josiah Deane, Joseph Desha, William Findley, James Fisk, Meshack Franklin, John Heister, William Helms, James Holland, David Holmes, Benjamin Howard, Daniel Ilsley, Richard M. Johnson, John Love, Robert Marion, Josiah Masters, William McCreery, Daniel Montgomery, jr., Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Gurdon S. Mumford, Roger Nelson, Thomas Newbold, Thomas Newton, John Porter, John Pugh, John Rea of Pennsylvania, John Rhea of Tennessee, Matthias Richards, Samuel Riker, Ebenezer Seaver, James Sloan, John Smilie, Jedediah K. Smith, John Smith, Peter Swart, John Taylor, David Thomas, John Thompson, James I. Van Allen, Jesse Wharton, Robert Whitehill, Isaac Wilbour, Marmaduke Williams, and James Witherell.—59.

The amendments of the Senate were then taken up and, on the question severally put thereupon, agreed to by the House.

GENERAL WILKINSON.

Mr. RANDOLPH laid on the table the documents which he had read on the thirty-first.

On motion of Mr. RANDOLPH that the House take up for consideration the resolution submitted by him, relative to the conduct of Brigadier General James Wilkinson,

Mr. TAYLOR said, before deciding on taking up this resolution now, he should be glad to know, and rose to ask for information, whether the gentleman from New Orleans had complied or intended to comply with the request of the House yesterday expressed.

The SPEAKER said he had not.

The House agreed to consider the resolution—54 to 36.

Mr. GARDNER said that an order had yesterday passed the House requesting two members to lay papers and information before them on this subject. He would ask whether any information had been furnished by either of these gentlemen? If there had, he should wish it to be printed for consideration.

The SPEAKER said the gentleman from Virginia had laid papers on the table, but the Delegate from Orleans had not made any communication.

Mr. CLARK laid on the table a letter in Spanish from the Baron de Carondelet to Manuel Gayoso, with a translation of the following extract:

Translation of an extract of a letter fron the Baron de Carondelet, Governor of Louisiana, to Don Manuel Gayoso de Lemos, Governor of Natches, dated New Orleans, 27th April, 1796.

"Argote's letter cannot in my opinion have foundation, since the Prince of Peace tells me that in consequence of the treaty, it is now useless to treat separately with Kentucky."

N. B. Argote was then Spanish Consul in Kentucky.

Mr. CHANDLER wished to know if these papers contained all the information which could be expected from the gentleman from New Orleans in consequence of the resolution?

Mr. RANDOLPH said the gentleman from New

Orleans did not appear to be in his seat at present; but Mr. R. presumed this was by no means all the information which was to be expected. It might be the only *paper* which the gentleman possessed on this subject; but, if the gentleman's knowledge was so extensive as it was believed to be, the House would perceive that he could not have had time since the adjournment of yesterday to have reduced it to such a statement as might be necessary. Indeed the House met so early and sat so late, that if other gentlemen in the House had the same feelings with him, they must be utterly incapacitated for business the remaining part of the twenty-four hours. Mr. R. wished however to understand whether that was all the information in the gentleman's possession, and he had no doubt the gentleman would inform them.

Mr. CLARK said it was pretty well understood that was not the whole information he possessed; but if he were to give it otherwise than on paper, what he said would be liable to criticism or misquotation. Mr. C. said it would be proper for him to know whether he could adduce evidence in support of the information he might give, for he might otherwise be called a calumniator. It could not be supposed that he had with him proofs in writing on this subject. When he left home he had not expected to be called upon for evidence. He could state where evidence might be had, and the persons who knew more than himself on the subject. If the House insisted, however, he would give what information he possessed.

Mr. FINDLEY said, that a few days ago when the inquiry into the causes of the failure of General St. Clair's expedition, in 1791, was introduced as a precedent for this case, he being one of the committee of inquiry on that case and alluded to, he had stated that it had no bearing on it as a precedent; that the resolution by which that committee was raised did not charge blame on the General, nor any other person concerned; that it was a measure of policy. The complete failure of that expedition had occasioned general discontent, and numerous paper publications, complaining of the failure of contractors, to do their duty, of the want of provisions, of the delay and insufficiency of the military apparatus, badness of gunpowder, undue delay of sending money, &c. The committee sat till near the end of the session, and reported various causes that contributed to the failure of the expedition, but no specific charge against any person, but the statement of facts went to exculpate the General from blame. The House took no order on that report.

During the next session, at the request of the Secretary of War, and Commissary of Military Stores, who thought the statement of the former report bore hard on that department, the subject was referred again to a select committee, consisting chiefly of the same members, who made a report of facts nearly similar to the former, with some additions, accompanied by a great amount of testimony, and a statement at large by the parties, which yet remains sealed up in a large box, which it is believed has never been opened; nor has any order taken on it, nor use made of it, except for information to satisfy the public mind, and to determine Congress to change the plan of Indian warfare, which it is well known they did do, by raising a more numerous and permanent army, and providing more effectually for its supply. So far was stated on a former day, but not published.

Mr. F. said that the above had been stated from recollection, but that since that time he had examined the Journals, by which it not only appeared that it was not only no precedent in favor of the question before the House, but decidedly against it. He said, however, that he would not have brought this into view if it had not been again yesterday introduced by the mover of the resolution, (Mr. RANDOLPH,) as a precedent, and the only one in favor of the extraordinary attempt.

Mr. F. said that from a review of the Journals, it appears that a resolution was offered for requesting the President to institute an inquiry into the causes of the late defeat of the army under the command of Major General St. Clair, and also into the causes of detentions or delays which were suggested to have attended the money, clothing, provisions, and military stores, for the use of the said army, and into such other causes as may in any manner have been productive of the said defeat. Though this resolution made no charge on any officer, yet, as it seemed to imply a censure on the President, as if he had neglected to inquire, or do his duty, the question was divided; that part which referred to the President was rejected by a great majority, and the resolution thus altered referred to a committee, not accompanied with a charge against any man's character, but merely to obtain such information as might be of use to Congress in organizing a new army and plan of operations, and satisfying the public mind, by a candid and open statement of facts, and it had this salutary effect; but an attempt to call on the President, as has been stated, was rejected. Therefore, every circumstance in this transaction bears forcibly against this irregular attempt.

Mr. F. said that a request from the Legislature to the Executive was always understood to be a command, the only command that could be given by any branch of the Legislature. It is true that this House has no power or means of compelling the President to obey. It is, however, a sufficient means of inducing the citizens to believe that the President has neglected to do his duty, and thus of impairing public confidence in the Executive Department. It is known that the President has instituted the inquiry desired. Is it then necessary to request, that is to say, to command the President to do what he is actually employed in doing?

Mr. F. said he was at first astonished at the diversity of opinion that appeared among the members on this subject, that they did not at once discern that the subject did not, nor could not, constitutionally come before the House; that they did not consider that, if the most numerous branch of the Legislature assumed, not to say, usurped, the power of denouncing the character of individuals, whether officers or others, and of holding an

inquisition on them, and usurping the Constitutional discretion of the Executive, for which that branch alone, and not this House, was responsible, it would at all times put it in the power of a revengeful and popular leader, by the influence of solemn grimace, and alarms of danger, and eloquent expressions of zeal for the public good, to degrade even this honorable House, by making it the instrument of gratifying his private enmities, of spreading terror around him, and depressing whom he pleased to a station of infamy, to be entailed on his family without the hope of relief. What hope can that man have of an impartial trial by a jury or a court martial, who has been condemned, or whose character has been even implicated by the vote of so respectable a body as the House of Representatives of the United States? Shall this honorable House throw its weight into the scale of prepossessions against an individual whom they know, at his own request, is arraigned to stand his trial before the proper, the Constitutional, tribunal? No, this is not possible; they cannot do it by vote; they have no such power; but they can do it by declamation; of this opportunity some of them have taken sufficient but malevolent advantage.

Mr. F. said, that on reflection, his first astonishment had abated, when he considered that the constitutions of the seventeen States, though all of them republican, had shades of difference; that some of them had vested large portions of executive power in the legislative branch. He could easily conceive that they had brought to Congress the impressions made on their minds by their own State governments; he had long found that to be the case in committees. He would not now attempt to explain or argue from the Constitutional principles, this having been so fully explained by those who had spoken before from different States, by his colleague (Mr. SMILIE) and others; but he would conclude his observations by assuring the House, that what he had advanced was not an ideal theory; that such things had often taken place in different States, but that he would confine himself to the State he had the honor to represent in part.

In that State, while it was a colony, like most other colonies, a foreign Governor, himself under foreign control, had a negative over all the acts of the Legislature; this, of course, rendered all the encroachments of the Legislature on the Executive popular. When the independent constitution of Pennsylvania was framed, it gave the Legislature no such power; but it did not sufficiently restrain it, because it did not sufficiently anticipate the deviations it might make. These deviations, after the conclusion of the Revolutionary war, when other men came into place, became numerous; but of numerous examples, he would detain the House with mentioning only one. The Secretary of the Commonwealth, the first Secretary under the independent government, a member of Congress under the Confederation, &c., was, unheard, and as General Wilkinson is now, declared a public defaulter, unworthy of public confidence, &c., and, as a matter of course, dismissed from office. He sunk under the weight of a vote of the House of Representatives. He neither enjoyed public nor private confidence, and without trial by jury, or the hope of relief, this early patriot was consigned to penury and infamy by such a vote as is now urged by the mover.

The Council of Censors, a political body appointed by the constitution of that State to examine and censure the deviations from the constitution made by the different branches of the Government, that body, along with many other cases, passed a just censure on this. The oppressed took courage, had his action brought on before a court and jury, and it was found that, so far from being a defaulter, he was found a creditor for a considerable sum from the State, which was awarded him by the court; but what was still more remarkable, he was unanimously elected Secretary of the Senate on the same floor on which he had been unjustly degraded, by members many of whom differed from him in political sentiments. He still enjoys public confidence and office. That Legislature, under the influence of popular leaders, to gratify personal or party enmities, assuming in various instances the powers of the other departments, was a principal cause of the constitution in that State being revised.

The same conduct will produce the same effects in all very numerous bodies. They were well calculated for legislation, but badly calculated for judicial decision, or holding inquisitions on the characters and conduct of individuals, and happily they are vested with no such power by the Constitution. Whatever the guilt or innocence of General Wilkinson was, had nothing to do with the question, the House were not judges of it. It is a good, and generally approved maxim, that persons are to be presumed innocent till they are legally convicted; but if the House countenanced this proceeding they would be giving their weight, and a mighty weight it was, to pronounce the person guilty before trial; doing this, as had been expressed yesterday by his colleague, would subject an individual to punishment by the State judiciaries, because exciting prejudices against the person had a tendency to prevent a fair trial. Courts of justice were provided for deciding and awarding punishments to every crime; why distrust the Constitutional authorities, and attempt to assume the powers vested in them? Where such irregular and unauthorized attempts are made, there is good ground to suspect the motives for which they are made. Indeed, the mover of the resolution, the other day, on the question of postponement, informed the House that he had in part accomplished his object, but left us to guess what that was; this, however, was not difficult to do. When the usual course of proceeding is deserted, and irregular and extraordinary methods are resorted to, to destroy an official character who has long merited and enjoyed public confidence, it ought to be presumed that such character cannot be convicted of a crime either in the civil or military courts; but though this is the natural and reasonable presumption, yet the reverse of this is the general opinion, because there is with reason

a general bias in the minds of man to suspicion and distrust, and when this bias is aided by the mighty weight of a vote of the House of Representatives of the United States, supposed to contain the collected wisdom of the nation, this being out of the usual course, induces people to believe the person implicated to be a monster of uncommon magnitude, and dangerous in the extreme. When some popular and revengeful leader has succeeded so far, what can the accused do but sit down and mourn over his misfortunes, and his having been deceived? That, in reading the Constitution and the law, when he accepted of an office of trust, he calculated on being dealt with according to these rules, but did not calculate on having his character, more valuable to him than property, or even life, arraigned, disposed of, and destroyed by a body of men who had no authority vested in them for such purposes, and who were so privileged as to be protected from actions of damage for slander? Mr. F. said that every man so oppressed could not calculate on rising with honor from under the depressing load of calumny, and seeing his oppressors sink to infamy, and the Constitution, to prevent such degrading outrages for the future, revised, as the now master of the Rolls, formerly Secretary of the State of Pennsylvania, had seen.

Mr. F. concluded by saying, that not for favor or lenity to General Wilkinson more than to any other citizen, he was opposed to this proceeding; that for the honor and usefulness of the Government he was opposed to it; that he thought himself, and taught his children and friends to think, that the House of Representatives was the sheet-anchor of our liberties. To preserve that character to the Legislature, particularly to that branch, from being the terror and scourge of the citizens at the nod of a popular leader, and to preserve the character which the Constitution, the only bond of Union between the States, entitled it to enjoy, he would vote against this unconstitutional and disorderly resolution in the form it was now presented, and in every possible form, except to refer it to the President as information which only belonged to the Executive.

Mr. TAYLOR moved to postpone the consideration of the resolution.

Mr. CROWNINSHIELD had not intended to say anything on this subject; but after four or five days spent on the subject, he felt disposed to say a few words. What, after so long a discussion, had the House done? They had spent the whole of yesterday in debating whether they should request information. What had been the result of their determination? The gentleman from Virginia had simply laid on the table the papers which he had read in his place. The gentleman from Orleans had offered a letter to the House from the Spanish Consul, proving that the Spanish Government had projected a scheme to separate Kentucky from the Union. Whether General Wilkinson was concerned in it or not they did not know; the letter therefore had no bearing on the subject before the House.

What were they now called upon to do? To request the President to institute an inquiry into the conduct of Brigadier General Wilkinson. Was this proper or right? Was it just to the officer or to the character of the House? The House had no right to act on the subject at all. It was understood that an inquiry had been ordered with regard to the conduct of this officer generally; then why proceed a step further in this? Why request the President to do what he had actually done? Mr. C. saw no necessity for it. He did not wish to give an opinion as to the character of this officer: he knew nothing about it; but they surely would not attempt to ruin the character of a meritorious officer upon mere hearsay. They owed it to their own character not to make the inquiry at this time: he was surprised at the time which had been occupied by this already, and the more he reflected, the more he thought the resolution should be immediately decided. Were they to wait till the gentleman from New Orleans should receive this evidence from the Western country? Let us dispose of it at once, said he. As to General Wilkinson's rank in the Army, about which so much had been said, Mr. C. did not conceive that this officer was Commander-in-Chief of the Army of the United States. He understood the President to be Commander-in-Chief. If the militia were called out, Wilkinson would not command. Any Major General of militia would take precedence of him.

Mr. LLOYD said the gentleman from Massachusetts seemed to be in great haste to decide upon this resolution, because the information was not yet before them. Mr. L. said as the House had thought proper to adopt the resolution, they must have had some object in view. Did the gentleman expect that the House would call upon gentlemen to lay information on the table touching a man's character without intending to act upon it? Mr. L. thought this could not be.. If gentlemen who yesterday voted for the resolution calling for information, now wished to decide the main question, what object could they have in view? It was true that as yet no information had been laid on the table; the gentleman had not had time to prepare it.

The gentleman from Massachusetts had expressed his surprise that so much time had been taken up in the discussion. Mr. L. said although he would not be considered as giving his opinion as to the guilt or innocence of General Wilkinson, he thought the subject was important, as respected the officer himself and the interests of his country. If there were advocates or friends of this person in the House, they ought not to hesitate a moment in voting for an inquiry. How was the character of General Wilkinson to be relieved from the suspicion under which it now labored, except his conduct were inquired into? On the other hand, how otherwise were the people to be convinced of his innocence, and feel that confidence in him which was necessary for the Commander-in-Chief? An inquiry ought to be had as respected him, on the one hand, and his country on the other.

The gentleman seemed to chuckle at the idea

that this was all the evidence that would be produced: Mr. L. would ask if this was not sufficient ground for a request to the President to cause an inquiry which might produce more? It certainly was. Call upon the President, said Mr. L. to make an inquiry; and when that inquiry is had other documents may be procured. But the House were told that an inquiry was ordered. Were they to arrest a legislative act on information in this manner—for they had no official information of it? Surely not.

Mr. L. would not say more at this time; he would not give an opinion on the guilt or innocence of the person accused. He hoped that the papers laid on the table by the gentlemen from New Orleans and Virginia would be recorded; and when further information was received, that they would act on it.

Mr. Milnor observed, that what had been said by the gentleman last up was a sufficient reason why this should not now be decided on—that there was other information to be laid before the House. Now, was it necessary or right for the House to act with so much precipitancy on this subject as was urged? He thought, for his own part, that they were entirely premature in taking this resolution into consideration at this time. The resolution went merely to request the President of the United States to institute an inquiry. It ought to go further; it ought to order these papers to be transmitted to the President. If they passed the resolution as it now stood, might not the President with propriety return it, and ask on what grounds they had passed it? The whole information in their possession should be laid before the President, that he might judge of the propriety of causing an inquiry. Mr. M. had been, throughout, opposed to making this request; he had before said that if gentlemen would lay information upon the table, he would be willing to transmit such information to the President of the United States. This would be doing all that their duty required; and if they did more, they would interfere with the duty of the Executive. It has been stated that an inquiry was instituted. He recollected that a gentleman had yesterday stated that a military trial would be a mere nullity. Admitting this fact, the resolution asked nothing more than that an inquiry should be made. Why, then, should they precipitate themselves into this measure, when they understood, although not "officially" communicated, that an inquiry was instituted; and it had never been customary for the President of the United States to inform the House of the institution of a court of inquiry for any particular purpose? He hoped the resolution would lie on the table, that they might have all the light on the subject which they had reason to expect.

Mr. W. Alston thought that if gentlemen were satisfied that an inquiry would be made in a full, fair, and open manner, they need not discuss the subject at this time, in this place; neither would he shut the door against any information which the gentleman from Orleans, after brushing up his recollection, might have to communicate. He should be willing to receive it, but not at the time the subject was pending, to be subject to the animadversions of gentlemen in debate. It was proper now to decide on the resolution, and if his opinion prevailed, it would be rejected: he should be willing to transfer these papers to the place where they might and ought to be made use of; and if the gentleman from New Orleans should at any time hereafter communicate any information, it might be sent to the same place. Without exciting the public mind by inflammatory speeches, justice ought to be done. The information of the gentleman from New Orleans was stated to be verbal. Now, he would leave it to the good sense of the House, whether it would be proper to receive such information as the gentleman was going to communicate in such a manner as might subject it to animadversion. Would it not be better to get rid of this subject; to make use of the evidence in the only way which it could be properly disposed of? If any gentleman could conceive that this resolution would serve any beneficial purpose, let it be adopted; but if gentlemen were of opinion that a full inquiry would be had, he saw no reason why they should refuse to be influenced by that opinion because official information of its establishment had never been communicated. In giving his vote he should act agreeably to the impression made on his mind by the knowledge of an inquiry having been instituted in the same manner as if it had been officially made known to him. He could see no good that would result from postponement day after day, and spinning out discussion as they had done. He, therefore, hoped the resolution would be rejected, and that a motion would be agreed to for transmitting them to the President of the United States, or to the Secretary of War.

Mr. Gardenier said it did appear to him, if there had been a sincere disposition to promote a fair inquiry, there would not have been so much complaint of the time of the House being taken up in discussion. It was not to be supposed that the most proper way would at once have been fallen on by the House; and he thought he perceived in a majority of the House a sincere desire to perform the duty they owed to the people. Mr. G. did not think, when the House voted to take up the resolution this morning, that they were in a situation to decide upon it. If the testimony of the gentleman from New Orleans were as full as he had much reason to believe it was, Mr. G. said he should be inclined to vote against the resolution of the gentleman from Virginia, or for its postponement, for the purpose of appointing a committee of inquiry into the whole transaction. It had been yesterday said that the Government of Spain had set aside a large sum for the purpose of corrupting our citizens. To what extent the project had succeeded, the House had not yet learned; but this they knew, that it was their duty not to shut their eyes against transactions so enormous.

Whether the appointment of such a general committee of investigation would be proper or not, depended very much on the information which

should be communicated by the gentleman from New Orleans.

As to the particular subject of the inquiry which had been instituted by the President, Mr. G. was willing to hope it had been done with the best views, but could not help supposing that this inquiry must be inefficient, because all the powers with which the President could clothe that tribunal were not competent to the end in view. It could not be true that a military tribunal could be clothed with authority to attach or commit to prison those who refused to obey its process. It would be the establishment of military law, to a certain extent. It would be granting to the military a power belonging exclusively to a civil magistrate. Such a court might make inquiry of those willing to attend and give evidence, but could not compel the attendance of witnesses who were disposed to decline their invitation. The want of these powers was so evidently proved by the distinction between civil and military institutions, that he should suppose it required no argument to prove it. Military courts only possessed power in cases of military conduct, and then but over military characters. He had it from the authority of a military gentleman, in whom he could confide, that such a tribunal as had been established could not compel the attendance of witnesses.

Mr. G. said he could be well content to let this inquiry proceed, if he could be satisfied that the tribunal had power sufficient to embrace the subject; but if not, it was evident that the whole must terminate in an unsatisfactory manner—that the committee or tribunal would report that they had not been able to find anything to criminate General Wilkinson, which would but establish his innocence. The House knew that these charges had been resounded against General W. They knew that a gentleman in the Western country of high standing (he meant Mr. Davies) had invited General W. to prosecute him for writing and publishing that he was a pensioner of Spain. That gentleman had asserted that it was in his power to prove these charges. Mr. G. thought, that in a case of this kind, that gentleman should be examined, but he could not be by this tribunal. If this person could not be compelled to give evidence, much less could the gentleman from New Orleans. Knowing this, the House had requested the gentleman from New Orleans to communicate to the House the information in his possession.

If a court of inquiry had been instituted, said Mr. G., it ought not to arrest the proceedings of this House. It is in our power, and ours only, to appoint a committee who shall have power to send for persons and papers—it is to this House only that the power can be confided. Was it ever before known, that in a country in which the gold of a foreign country had been distributed for years—the circumstances concerning which being so little known—that so much listlessness had been exhibited about a matter of so much importance, so eminently demanding the attention of the Grand Inquest of the nation? Gentlemen had contended they had not power to act in this case; that corruption should stalk abroad, and treason be engendered in the very vitals of the nation, and that this House had no right to make an inquiry, or take such steps as the public safety might require! He had before said he could not reason on this subject—indeed, he could not. He therefore hoped the resolution would lie on the table, because they were not arrived at that stage of the business in which they could be enabled to decide.

Mr. ROWAN said he had yesterday mentioned certain facts; he did not then know that it was in his power to prove those facts. He had found a certified copy of the deposition made by Judge Innes to the patriots of Kentucky. He would read extracts from it:

Extracts from a letter from Thomas Power to Judge Sebastian, containing proposals from the Spanish Court, communicated in testimony before the Kentucky Legislature by Judge Innes.

"His excellency the Baron of Carondelet, Commander-in-Chief and Governor of His Catholic Majesty's provinces of West Florida and Louisiana, having communications of importance, embracing the interests of said provinces, and at the same time deeply affecting those of Kentucky and the Western country in general, to make to its inhabitants, through the medium of the influential characters in this country, and judging, in the present uncertain and critical attitude of politics, it highly imprudent and dangerous to lay them on paper, has expressly commissioned and authorized me to submit the following proposals to the consideration of Messrs. S. N. I. and M., and also of such other gentlemen as may be pointed out by them, and to receive from them their sentiments and determination on the subject.

"1st. The above mentioned gentlemen are immediately to exert all their influence in impressing on the minds of the inhabitants of the Western country a conviction of the necessity of their withdrawing and separating themselves from the Federal Union, and forming an independent government wholly unconnected with that of the Atlantic States. To prepare and dispose the people for such an event, it will be necessary that the most popular and eloquent writers in this State should, in well-timed publications, expose in the most striking point of view the inconveniences and disadvantages that a longer connexion with, and dependence on, the Atlantic States must inevitably draw upon them, and the great and innumerable difficulties in which they will probably be entangled if they do not speedily recede from the Union; the benefits they will certainly reap from a secession, ought to be pointed out in the most forcible and powerful manner; and the danger of permitting the Federal troops to take possession of the posts on the Mississippi, and thus forming a cordon of fortified places round them, must be particularly expatiated upon. In consideration of gentlemen devoting their time and talents to this subject, his excellency, the Baron of Carondelet, will appropriate the sum of one hundred thousand dollars to their use, which shall be paid in draughts on the royal treasury at New Orleans; or, if more convenient, shall be conveyed at the expense of His Catholic Majesty into this country, and held at their disposal. Moreover, should such persons as shall be instrumental in promoting the views of His Catholic Majesty hold any public employment, and in consequence of taking an active part in endeavoring to effect a secession, shall lose their employments, a compensation equal at least to the emolu-

ments of their office shall be made to them by His Catholic Majesty, let their efforts be crowned with success, or terminate in disappointment.

"Immediately after the Declaration of Independence Fort Massac should be taken possession of by the troops of the new Government.

"His Catholic Majesty will further supply the sum of one hundred thousand dollars for the raising and maintaining the said troops, which sum shall also be conveyed to, and delivered at, Fort Massac."

In 1795 some characters in Kentucky were addressed by a short letter from the Spanish agent, and he deemed it his duty to inform the House that when Judge Innes, who delivered this testimony, was asked how he came to be known and singled out, he replied that he had never been there, had never heard of the correspondence, and could not account for it otherwise than by an acquaintance with General Wilkinson; that he had given Wilkinson Sterne's Sentimental Journey, with his name witten in it; and from the book's being given to the Spanish commander, he supposed his name had become known to the Spaniards. Wilkinson presented a book with Innes's name in it to the Spaniards, and they immediately concluded that Innes was a corrupt man. This was a little circumstance, but fraught with meaning, and ought to have influence with the House in making this inquiry. They saw that corruption and intrigue had been practised in that country, that Wilkinson was supposed to be connected with it, not to a certainty, but so much so as to render it worth inquiring into; it was due to the man himself, and to the nation, that inquiry should be made. He was, therefore, opposed to the resolution lying on the table; they could gain nothing by it; the information which the gentleman from New Orleans could give was but a part of the whole. I have it in my power, said Mr. R., to name persons to a proper tribunal who can give important information. The evidence of the gentleman from New Orleans, he said, was unimportant compared with what remained behind the screen. There was much information which might be given to a tribunal vested with the power of issuing compulsory process. Why not then immediately themselves go into an inquiry?

It was said that the House had not the power; he hoped the present question would be so stated as to leave a precedent on record by which future Legislatures might be governed. If they were prepared to surrender this right, it was not fit that they should continue much longer a nation, they were only deluding themselves with an idea of national existence if this doctrine prevailed. It did belong to them; it grew out of the general construction of the Constitution, and from a comparison of the particular powers of the several departments of Government.

We are told, however, said Mr. R., that the President is making an inquiry; let him proceed, but let us do our duty. The people will not expect us to surrender the national rights and abandon the inquiry. The people were jealous of their rights, and however confident in the Executive would not abandon it to his direction. The permission of this power to the Executive exclusively might not now be dangerous; but the time to form good precedents was when they had a President in whom they could confide. The President's having instituted an inquiry was no argument with him at all. This House had first originated the inquiry; and should they tamely abandon it because the President had appointed three subaltern officers to carry on an inquiry—an inquiry which must be ineffectual? And it was known, too, that the province of a court martial was confined to the military conduct of that officer—confined to acts which related to him as an officer, but not as a man. He was a military officer at the time in which he was charged with having been corrupted by the Spanish Government, but had not received it under color of a military act. An inquisition into his conduct therefore did not attach to a military court, but to the grand inquest of the nation. This man was charged with corruption, and had forfeited the confidence of the people. Would the House, under these circumstances, disclaim an inquiry? If they did, they disclaimed one of the great powers with which they were indubitably clothed.

It had been said that this inquiry would affect private character. Mr. R. respected private character; but when placed in competition with the great interests of the nation, he would not be so squeamishly delicate about it. Cases had heretofore occurred in which a civil officer had been charged with having acted improperly, and evidence collected from every part of the nation and published a year before his trial. The interest of the nation and their duty to their constituents required it, and he hoped it would be made; not that the House should interrupt the inquiry of the President, but suffer it also to go on.

This inquiry would involve more men than Wilkinson. They would find that the Court of Spain addressed itself to high characters; humble characters would not suit their purposes. This inquiry would lead to an implication of others whom it might be important for the nation to understand, in order to be relieved from a possibility of danger at home, in case of a foreign war, from the circumstance of those having great power and control possessing a disposition to ruin the country. If the House were disposed to make effectual inquiry, they would oppose the postponement and adopt an amendment which he had proposed to offer for appointing a special committee for inquiry, with power to compel attendance of witnesses, &c.

The American Government was not very old, and they had already discovered three treasonable projects—a late one, which had excited much alarm, and into which inquiry had been made, and delicacy toward character had not been very much regarded. The President of the United States had thought it his duty to charge one of the great departments of the nation with the corrupt administration of the law: and, in so doing, had given an illustrious example that delicacy should yield to duty.

The Spanish conspiracy and the two thousand Kentuckians, officered under French colors afterward, did not excite the same sensation on every mind that it did on his. If, said Mr. R., you are disposed to turn a deaf ear to this, you will soon learn, with all your vigor, unwelcome intelligence from the Louisiana country. You should determine that in no part of the United States should treason lurk concealed—that it is vain for any man, whatever be his elevation, to cover improper conduct from the nation. Surely, our existence is important; our Government is assailed, corruption rankles in an important part. I hope such a display of energy will now be made as will paralyze treason and corruption yet in embryo.

Mr. TAYLOR said, when he made the motion for postponement, he did it not to give gentlemen an opportunity to blacken this man's character; he had hoped that the usual course of confining the debate to the motion in hand would have been adhered to. But, as gentlemen had travelled out of their course, and expressed so great a desire to discuss the main question, he was not disposed to indulge them. From a sense of justice to the person involved, he would not afford an instrument of protracting slaughter to his character. We have been travelling, from step to step, said Mr. T., and every proposition, however wide and abstracted, has but afforded another means of torture. I would not be considered as one of those who would propose an instrument to sear the feelings of any man, be he whom he may; and as gentlemen are so extremely anxious for discussion, my motion shall not afford a pretext for it. Mr. T. then withdrew the motion for postponement.

Mr. MILNOR immediately renewed the motion.

Mr. SMILIE wished the gentleman from Kentucky would tell the House what were the proceedings of the Legislature on this evidence, and who was the person who delivered it?

Mr. ROWAN said, the person who stated this was Judge Innes, not in the character of a culprit, but as a witness. Mr. R. had allusion to the following resolution of the Legislature of that State, which he then read:

"Whereupon your committee does not hesitate to declare as their opinion that the information given to the House of Representatives is substantially true, and correctly detailed; and that the said Judge Sebastian is guilty of having for several years received from the Spanish Government a pension, paid in cash annually, to the amount of two thousand dollars. Your committee further report, as their opinion, that while Judge Sebastian was in the exercise of his office in this State, and drawing his annual salary therefrom, he was employed in carrying on with the agents of the Spanish Government, an illicit, unjustifiable, and highly criminal intercourse, subversive of every duty he owed to the constituted authorities of our country, and highly derogatory to the character of Kentucky."

This, said Mr. R., I am proud to say is the language of Kentuckians.

Mr. SMILIE said, this was the proceeding of that Legislature in the case of Sebastian. He believed the Legislature had proceeded correctly, and the gentleman had told them this was a specimen of patriotism of Kentucky. Mr. S. thought so too, and that Kentucky was entitled to that character; but it was strange that this same patriotic Legislature had never communicated this information to the Secretary of State.

Mr. ROWAN.—I will inform the gentleman that I myself, as Secretary of State, did enclose it to the President.

Mr. SMILIE did not think the evidence of such a character as Power could have any weight. The man who had told them that morality in public and morality in private life were different things, and that a stoic would make a bungling politician—a man void of principle was not entitled to credit.

The gentleman had said he wished to see the man who would deny the power of this House. He may see one, said Mr. S., it is myself; and I hope there are many others in the House prepared to deny the power of the House. It is unnecessary to go into an argument again to show what are the powers of the House, prescribed by the Constitution. The gentleman had not attempted to show that the House had the power, nor can it be shown. But the gentleman supposes that, except this House can assume power to act for the public safety, there is no safety for the Republic. Surely, the patriots who framed the Constitution supposed that the distribution of power and the frame of Government it contained were sufficient to preserve the safety of the nation. But the gentleman says we must appoint a committee. Will the gentleman show whence we derive the authority to appoint a committee of inquiry? for I perceive he doubts that other departments will not do their duty. I will ask the gentleman, supposing that his doctrine, absurd as it is, was to obtain, and a committee to be appointed, what can be done? Are we to proceed to judgment on this officer, or what is to be done? If, according to his idea, this House is left by the Constitution to roam at large without limit or restriction, and exercise its powers as the passions would lead us, independently of the Constitution, I see nothing but ruin to result; and I am not afraid in the most express language to deny that power, nor am I afraid that the Constitution will not bear us through. Mr. S. said, the Constitution was well understood by the body of the people; and they would not blame their Representatives who were desirous to preserve the proper distinction between the different departments of Government. He cared not what was the question. He should vote against the resolution, and against any postponement or commitment of it; that the business might be left with the proper authority.

Mr. FINDLEY.—Before the question is taken on this extraordinary resolution lying on the table, or that it be finally disposed of in any other manner, I will address you, sir, in a manner that I know to be out of order, but believing as I do the admission of this resolution, and every question arising thereon, to have been out of order, I will take the liberty to proceed, hoping that I will not be interrupted by the House, the members having

patiently submitted to the desultory discussions which have occupied their attention for several days, on a subject which could not Constitutionally come before them. Though this House is not a court of record nor of judiciary decision, yet they received a few days ago, a charge against a citizen, that was a responsible military officer, who in that character had rendered important services to the United States for at least thirty years, and most essential services at a very recent period, is well known; yet it is not to advocate his official character or conduct that I address you, sir, and through you this House. It is to advocate the liberties of the citizens of the United States, the cause of my sons, and of sons yet unborn; in this cause I feel myself under a necessity of acting in some degree contrary to my professions.

The House, sir, has not only received the charge and information of the mover, without any documents having been laid on the table, but on his demand has received information from the Delegate of the Territory of New Orleans. That gentleman, taken by surprise, stated that he was discouraged in attempting to give information to the President; that he gave information in writing to the Secretary of State, to which no attention, that he knew of, was paid. Finding that this information was, by some members, made use of to implicate the Administration; that gentleman, voluntarily, with that candor which he is known to possess, explained to the House that the information which he had designed to give to the President, and did give to the Secretary of State, did not relate to the question then before the House; that he could give further information if he was officially called on, but would not otherwise. This observation does honor to his understanding. I wish, sir, the hint had been taken; that gentleman knew that this House was authorized to originate or concur in enacting laws, but had no power to decide on, or execute those laws. This gentleman was not called upon nor obliged, probably not able, to give information of transactions prior to that period of which he was Consul for the United States. I have always understood that he was a useful and faithful Consul for the United States at New Orleans, while it remained under the Spanish Government.

The gentleman from Kentucky (Mr. Rowan) who addressed you, sir, last but one, has, without being called upon, volunteered information against General Wilkinson, not however supported by such testimony as could be admitted in any court of law or equity, but such as the mover has offered and also volunteered; however I disapprove of this practice, it has, by being indulged, become necessary that I should also give information with relation to this subject.

From the commencement of the Federal Government, and even before it commenced, there were complaints and murmurs in the Ohio country, which gave occasion to Spanish intrigues. To remove these complaints and counteract these intrigues, President Washington was very attentive, and for that purpose employed one or more agents to go into the country. In short, he kept a watchful eye on the people of that country. This circumstance was generally known at the time, and is recorded in Ramsay's Life of Washington, and, if I recollect well, in Marshall's.

In 1795, a treaty was concluded with Spain favorable to the Western country, but the execution of it, from various causes, was so much delayed as to render its success doubtful. During this suspense these intrigues between the Spanish Government at New Orleans and characters on the Ohio were revived and carried to the greatest height; money, enclosed in sugar barrels, was sent to Kentucky, to be distributed to different persons supposed to be influential; and, if I am not mistaken, overtures were made to the Baron de Carondelet, the Governor, to be King of Louisiana, Kentucky, &c., which he refused; but, information of all these circumstances were duly put in possession of the Government. Probably all the characters to whom the money and letters were sent, were not known, but the transaction was well known to the Administration, and no doubt the most prudent means used to counteract or prevent its effects. I had this information principally from the respectable gentleman who was, during that period, Commissioner in behalf of the United States for carrying the treaty with Spain into effect, and for running the boundary line, the execution of which these intrigues delayed, and went near to defeat. I had this information from that respectable gentleman in the Fall of 1799, therefore, before the present Administration commenced, and three years before the gentleman from Orleans gave, or attempted to give his information respecting these intrigues, which, however, he candidly says, did not relate to the case before the House, viz: the corruption of General Wilkinson. No doubt the information given of these intrigues during former Administrations, is lodged in the office of State, and consequently early known to the present Administration. The gentleman from whom I had the information, conversed with me at the same time about General Wilkinson, who, as Commander of the Army, had to assist in the execution of the treaty, but did not give the smallest hint of his being implicated in these intrigues, except giving assistance in counteracting them. It is well known that he stood high in the confidence of that Administration, as he had done in the former, and has done during the present, and enjoyed, as far as I have known, the public confidence, till in favor of a recent and dreadful intrigue, which the General has since contributed so greatly to defeat, it was found necessary to denounce his character. I had not, sir, intended to have mentioned this information to the House until I could have had it from under the hand of the gentleman himself, but the information now given by the gentleman from Kentucky, and the manner in which the Administration has been implicated for declining to receive information in a particular instance, seems to render it improper to delay this information longer. It was not given to me in confidence.

I did not rise, sir, with a view to enter into the

argument. The gentleman from Kentucky's claim of such unconstitutional and dangerous powers to this House, has been sufficiently noticed by my colleague, who has just sat down, (Mr. SMILIE.) It is such a doctrine as the gentleman himself, on due reflection, will retract. He concluded, with very earnestly and repeatedly persuading the members not to suffer themselves to be influenced by delicacy for the feelings of General Wilkinson, &c. Mr. Speaker, even delicacy for the feelings of the General, or any other citizen, should so far have effect as to prevent their character from being traduced where they cannot be permitted to be heard in their own vindication, and where there is no legal authority to investigate their case, or to decide upon their character. The members of this House, sir, are privileged from being called to account, or punished elsewhere, for what they say on this floor; but, to prevent the abuse of this necessary privilege to the purposes of private enmity, caprice, passion, or indiscretion, under the hypocritical disguise of zeal for the public good, the House is not only authorized to prescribe its own rules of decorum, but also to punish or even expel a member for the breach of these rules. Sir, even mentioning or implicating the name or character of an officer or citizen on this floor, so as to impute blame to his character, is a breach of decorum, and ought to be punished; and though it has, in some few instances, passed with impunity in public bodies, it has never failed to degrade the character of him who takes that indecent and ungentlemanly liberty, in the public opinion, and to sink the character of the public body that permits it. No such conduct ought to be permitted, unless in order to impeachment of a public officer, or in order to the punishment of a contempt.

On this occasion, sir, I am not, however, influenced by delicacy for the feelings of General Wilkinson; I am influenced by delicacy of a superior kind: I am influenced very seriously, sir, by a delicacy for the character of this House. I am jealous lest, instead of being the Constitutional protectors of the citizens, we should give ground to suspect that we would submit to become instruments of persecution or private revenge at the instigation of any of our own members. We have courts of justice, with trial by jury, for the application of our laws to the punishment of crimes and the protection of innocence; but those citizens who choose to accept of offices, civil or military, are obliged to surrender the right of trial by jury for official crimes, as security for their official trust. Civil officers subject themselves to impeachment, which may result in disqualification and infamy, and military officers to a decision of courts martial, which may result in forfeiture of life.

Mr. Speaker, we can only prescribe to the Executive, or the courts of justice, civil or military, by a law of Congress; if the laws are insufficient for the detection of crimes, let Congress revise them, or make new laws. If there are not a sufficient number of courts established, Congress has authority to organize other courts; but one branch of Congress alone has no right officially to inquire into, or sit in judgment on the character of Executive officers, except with a view to impeachment, which, it is admitted, does not apply to this case. It is admitted, even by the advocates of the resolution, that the House can pass no sentence in this case. Why, then, begin what we cannot finish? Happily, the resolution for raising a committee, with authority to call for persons, papers, records, &c., has been rejected by such a majority as does honor to the House; but the propriety of doing so has been again advocated, and may, probably, be again renewed; but I am confident, Mr. Speaker, that this House will never institute a court of slander out of its own body, or degrade itself into a Court of Star Chamber. If General Wilkinson is guilty, which he may be, for aught I know, let his guilt be detected and punished by the proper tribunal, which is at his own request already appointed. Permit me, sir, to conclude by saying that, on a review of the whole subject, as it has been conducted, General Wilkinson is not the sole, nor the principal object. Whatever danger there might have been, in 1796, during General WASHINGTON's Presidency, or in the four following years of Mr. Adams's Presidency, there is no such danger now as to justify a member of this House in stopping and delaying, by solemn grimace, a bill which has for its object the necessary enforcement of the embargo, every hour's delay of which, in so far, defeated its salutary effects in favor of the peace of the country; yet we know that, by this stratagem, I cannot call it less, that important bill was delayed in its passage several days, though the member who moved the resolution before the House, had voted against the embargo, after having been the original mover and advocate of it: yet this will not account for his novel interruption of the passage of the supplementary law through the House; reasons for this must be sought for elsewhere, and time and circumstances will sufficiently suggest these reasons to every member and citizen acquainted with them.

Mr. BIBB understood the motion for postponement was made for the purpose of giving the gentleman from Orleans time to lay before the House such information as he possessed. To vote on this, it became necessary for him to inquire when the gentleman from Orleans would give his information—if he could do it in one or two days? If he could, Mr. B. said, he should vote for the postponement; but, if not, he should vote against it, because he was unwilling to hold up the character of any man to suspicion.

Mr. CLARK had no other wish than to obtain time to draw up his information; he could probably prepare it by Monday.

The motion for postponement was carried—70 to 32.

SATURDAY, January 9.

Mr. MARMADUKE WILLIAMS, from the committee appointed on the first ultimo, presented a bill making additional compensation to the mar-

shals for the districts of North Carolina and New Jersey; which was read twice and committed to the Committee of the Whole on Monday next.

The House resolved itself into a Committee of the Whole on the bill to incorporate the Protestant Episcopal Church in the town of Alexandria; and, after some time spent therein the Committee rose and had leave to sit again.

The House resolved itself into a Committee of the Whole on the report of the Committee of Ways and Means, of the twenty-third of November last, to whom were referred the petitions of Samuel Beebee and Edward Weld; and, after some time spent therein, the Committee rose and reported their agreement to the resolution contained therein; which was twice read, and agreed to by the House, as follows:

Resolved, That the accounting officers of the Treasury Department be authorized to settle the accounts of Edward Weld and Samuel Beebee, and pay the former the sum of one hundred dollars, and the latter the sum of fifty dollars, with interest on those respective sums, at the rate of eight per cent. per annum, agreeable to the terms of the aforesaid loan.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Ways and Means do prepare and bring in the same.

The House resolved itself into a Committee of the Whole on the bill to provide for the payment of certain expenses incurrred in the impeachment of Samuel Chase. The bill was reported without amendment and ordered to be engrossed, and read the third time on Tuesday next.

On motion of Mr. VAN HORNE,

Ordered, That the Secretary of the Treasury be requested to lay before this House a statement showing the amount of tonnage employed in the exportation of articles the produce or manufacture of the United States.

Mr. BLACKLEDGE, one of the members from North Carolina, presented to the House a resolution of the Legislature of the said State, relative to the erection of a fort for the command of the bar of Old Topsail Inlet, and the defence of Beaufort harbor.

The said resolution was read: Whereupon, a motion was made by Mr. BLACKLEDGE, that the House do come to the following resolution:

Resolved, That the Speaker transmit to the President of the United States the resolution of North Carolina, instructing the Senators, and requesting the Representatives, of that State in Congress, to use their endeavors to cause a sufficient fort to be built for the command of the bar of Old Topsail Inlet, and the defence of Beaufort harbor.

The House resolved itself into a Committee of the Whole on the bill remitting the duties payable on the importion of a monument to be erected in memory of the officers of the United States' Navy, who fell during the attack made on the city of Tripoli, in the year 1804.

Mr. MILNOR moved to add a new section to the bill, to appropriate a sum of money for railing in, and covering the monument. After some debate on this, in which Messrs. MILNOR, LYON, and WITHERELL supported, and Messrs. STANFORD, MACON, and SMILIE, opposed it, the Committee rose without deciding on it, and obtained leave to sit again.

AMERICAN SEAMEN.

Mr. DANA.—I request permission, sir, to submit to the attention of the House a proposition which has for its object the encouragement and security of seamen of the United States.

By seamen of the United States, I mean all who belong to the national family by birth or by regular adoption. The proposition has in view a principle of permanent policy, to which the United States may adhere in either alternative of peace or war. It is of such a nature, that, according to my apprehension, it will not contravene the stipulations of any imaginable treaty between the United States and any European Power. It is not intended to interrupt the progress of any negotiation which may be expected or depending. It proposes no national degradation; no acknowledgment of inferiority; no act of submission to any foreign Power. Yet, according to the estimate which I have been led to form of probable consequences, its adoption by national authority may operate materially to diminish the range of controversy with respect to seamen; and perhaps the principle might be carried to such extent as to remove the controversy altogether.

In saying this, I speak with reference to seamen who belong to the United States, in fact and in truth. The proposition supposes the propriety of making a strongly marked discrimination between true American seamen, and the aliens to our country and laws, foreign deserters, renegades, and fugitives from justice, impostors by whom the character of American seamen is falsely assumed and abused. It is proposed, that for our own service a preference should be given to our own seamen, over all others—that, as far as our policy secures privileges to persons engaged in the merchants service, the seamen who are our countrymen should have more and better employment, that they should be known with certainty, and protected with firmness.

If it should be asked what principle can be so free from objection, and yet adopted to produce such consequences, a general answer may readily be given, which will point to its character. The principle is plain, and practical. It has nothing of the splendor of theoretic system, nothing of the magnificence of learned, abstruse disquisition. It proceeds directly towards its object; and, for assuring the execution, it appeals to the interest of the American merchants, and to the hearts of the American seamen.

That this subject may be more distinctly understood, permit me, sir, to remind the House of the nature of our laws with respect to the revenue and navigation. It is well known that the revenue system is favorable to such ships or vessels as are legally denominated ships or vessels of the United States. The denomination is technical, and is given by statute to ships or vessels of

certain descriptions, which are entitled to peculiar benefits and privileges. These relate principally to the payment of imposts and tonnage.

All vessels entered in the United States are subjected to tonnage duties. But the difference in favor of vessels of the United States, as compared with other vessels, amounts in some cases to nearly a dollar per ton.

Although this privilege is valuable, the discrimination with respect to impost is of more importance. In cases of importation in foreign vessels, a discriminating duty of ten per cent. is added to the rates of impost, which would be chargeable on the same articles if imported in vessels of the United States; and, in this respect, all vessels which have not the qualifications required by the navigation law, are considered as foreign vessels, although they may be owned by American merchants. This difference of ten per cent. in the rates of impost might sometimes nearly amount to the value of the freights, or perhaps equal or exceed it, with respect to cargoes consisting of the finer and most precious fabrics.

These discriminations have been established for the encouragement of American shipping. Their operation has been free from violence; but it has been efficacious. The effect has been that of a power constantly applied, and regularly tending to produce a desired result. A recurrence to statements made by the Treasury Department, in different years, since the commencement of proceedings under the Constitution, will decisively prove the great increase of the proportion of American shipping employed in the trade between the United States and foreign countries.

As this principle of discrimination has been applied so effectually for the encouragement of American shipping, it is now proposed to apply the same principle for the encouragement and security of American seamen.

Gentlemen may judge with what effect it can be applied to this purpose, if they will now turn their attention to our navigation law. The "act concerning the registering and recording of ships or vessels" makes provision for the registering of ships or vessels which may be "denominated and deemed ships or vessels of the United States." To complete a title to all the privileges of such vessels, three general qualifications are required: American construction—American ownership—American command. The vessels must have been built within the United States, except certain cases of vessels owned by American citizens in the year 1789, or vessels condemned as prize or adjudged forfeited for breach of law. They must be owned wholly by American citizens having their usual residence in the United States, except in cases of American owners being abroad in a consular capacity, or acting as agents or partners of commercial houses consisting of American citizens actually carrying on trade within the United States. They must also be commanded by citizens of the United States; as it is expressly provided that the registered ships or vessels shall not continue to enjoy the benefits and privileges appertaining to ships or vessels of the United States, longer than "they shall continue to be wholly owned and to be commanded by a citizen or citizens of the United States."

In addition to these, it is now proposed to prescribe a further qualification, which has not as yet been required by our law, although the principle is perfectly plain, and corresponds to practical regulations well known to be adopted by some of the greatest civilized Powers, especially in Europe. It is to require, that registered ships or vessels, to be completely privileged as American, shall be navigated by a proportion of American mariners.

As soon as the proposition is stated, its efficacy may be instantly perceived. In case of its being adopted, American seamen would of course be employed in preference; and might, therefore, be enabled to obtain better employment, higher wages, and more comfortable means of subsistence. The interest of the regular American merchant, concerned in shipping, would require him to employ them; and his vessels could not otherwise enjoy the privileges of American vessels, and the additional wages for American seamen would be more than compensated by the exemption from discriminating duties in consequence of their being employed. At the same time it would be the interest of the true American seamen, and it would agree with sentiments of fair dealing and of duty towards brother-seamen, to expose foreign impostors who might attempt, by means of false swearing, to keep out of employment some of the honest seamen who are our own countrymen.

In adopting this principle into our navigation law, I could choose to renounce the whole system, now practised in our custom-houses, of issuing to individual seamen such certificates of citizenship as are commonly called protections. I am not for obliging the American seamen to carry such protections about their persons while on board American merchant vessels. The documentary proofs of the national character of the vessel, the complete evidence of the national flag, should constitute a sufficient protection for every American seaman on board who shall have been shipped for the voyage according to law. If such peaceable means of protection from impressment should not be respected, let us be prepared to adopt other measures of more decisive character.

It is obvious, in giving to the American seaman the protection of the documentary proofs of the national character of the vessel on board of which he is shipped, in thus giving him the complete protection of the American flag, the public would give him a protection which he could enjoy only while faithful to his duty in continuing with the vessel. By deserting from the service, he would instantly lose the benefit of this protection. And such a protection could not be fraudulently sold to an alien by the seaman for whom it was originally intended. These advantages might be expected from the nature of the regulations which would be proper for carrying the principle into effect.

That a vessel might be entitled in our own ports to all the privileges of the American flag, it ought to appear from the documents appertaining

to the vessel, it ought to appear from the regular ship's papers, that the vessel has on board the requisite proportion of American seamen. This would be a plain regulation, completely within our power, and acknowledging no national inferiority.

There is a reason for taking this subject into consideration at the present time. The operation of the existing embargo must undoubtedly throw out of employment a great number of seamen, among whom there may be some hundreds, or perhaps thousands of foreigners. Those foreign seamen being thrown out of American employment by the embargo, and being recalled to their own country by proclamation of its Government, it is not improbable that they may be disposed to leave the United States, with a view to employment in the foreign service. Under these circumstances, I am for holding out to the American seamen, to our countrymen, the encouragement of future privileges and employment in preference to others. This might operate as an inducement for them to continue in the United States; and they might be cheered by hopes of brighter prospects and better times, notwithstanding the sufferings to which they may be subjected by the pressure of the embargo.

With these views, I submit the following resolution for the consideration of the House:

Resolved, That, for the encouragement and security of seamen of the United States, it is expedient to make provision, that registered ships or vessels, after a time limited by law, shall not continue to enjoy the benefits and privileges appertaining to ships or vessels of the United States, unless some proportion of the mariners on board the same shall be citizens of the United States.

The resolution having been read at the Clerk's table, Mr. DANA moved to have it referred to a Committee of the whole House, that the principle might be fully discussed.—Agreed, and ordered for the next Wednesday.

Mr. DANA.—It may be recollected, that the Secretary of the Treasury, during the present session, has reported a statement of the tons of shipping owned in the United States. This is an interesting document, which may have an important bearing on the subject which has just been referred to a Committee of the Whole. Gentlemen may also deem it of importance to know how many seamen have been registered as American, and now belong to the several districts of the customs in the United States. The law respecting the relief and protection of American seamen contains a provision requiring the collectors of the customs to make returns, to the Department of State, of the numbers of seamen who have received certificates of citizenship, and been registered as American seamen in the respective districts. I am not certain, however, that the Secretary of State has it in his power to give all the information which is desired on this subject. But, as far the documents in his office may enable him to give the information, I could wish it to be in possession of the House. For this purpose, I propose the following resolution:

Resolved, That the Secretary of State be directed to lay before this House, a statement of the respective numbers of citizens of the United States registered as American seamen, and now belonging to the several districts of the customs, according to the returns made by the collectors, in pursuance of the law relative to the relief and protection of American seamen.

The resolution was adopted.

MONDAY, January 11.

Mr. BOYLE, from the Committee on Public Lands, who were directed to inquire into the expediency of allowing an additional compensation to the commissioners for examining titles to lands west of Pearl river, made a report recommending the adoption of a resolution declaring that it is inexpedient to grant an additional compensation to these commissioners; which was ordered to lie on the table.

The House resolved itself into a Committee of the Whole on the bill for the relief of Oliver Evans (allowing him to renew a patent which was of no effect from an informality in the original patent:) and, after some time spent in discussion of it, the Committee rose and reported the bill, which was ordered to a third reading tomorrow.

REPORT ON EMBARGO MEMORIAL.

Mr. NEWTON, from the Committee of Commerce and Manufactures, to whom was referred the memorial of the merchants of Philadelphia, praying the modification of the embargo law, so as to permit vessels cleared out at the time of the passage of that law, to go to sea, notwithstanding the embargo, made the following report:

The committee entertain no doubts that the facts are justly and correctly stated in the memorial. The object the memorialists have in view, is to obtain permission for their vessels to proceed on their respective voyages.

The cargoes consist principally of flaxseed, an article depending on a speedy exportations to insure its value. The memorialists place great reliance, to obtain the permission sought, on the hardship of their cases, and also on the ground of having procured clearances for their vessels, from the custom-house, to proceed on their voyages, previous to the passage of the act laying an embargo.

While the committee view, with becoming sensibility, the distressing situation in which the memorialists are placed—while with them they deplore and deprecate the events which have brought to a pause the commercial intercourse of the United States with foreign nations—they cannot give their assent to the opinion, that the cases of the memorialists are entitled to exemption from the inconveniences and hardships, if not the losses, which result from a general embargo. The committee cannot see any reason, why the cases, now under consideration, ought to be discriminated from those of other citizens. They cannot perceive how the mere compliance with the usual form of taking out clearances, for vessels to proceed on their voyages, can invest the memorialists with any distinguished privileges. From the distressing condition of the American commerce, liable, in its peaceful and inoffensive pursuits, to aggressions and outrages from the bellige-

rent nations of Europe, it became the indispensable duty of Congress to inhibit, by an embargo, the departure, on foreign voyages, of our seamen, our vessels, and merchandise. The Republic feels vitally those injuries which arise from the impoverishment of its citizens, and from the deprivation, by illegal impressments and detentions, of its mariners. The strength of a Republic resides in the citizens it can number, and in their patriotism and valor. Impotent and inefficient would that Government be, without an investiture of powers in extraordinary crises, to control and restrain the persons or pursuits of the citizens. Such a Government, destitute of that natural and irresistible impetus and energy indispensable to its preservation, would crouch to, and sink under the first blow that should be aimed at it. The enlightened and virtuous patriots who framed the Constitution, foreseeing the trials and conflicts the United States would have, in their political progress, to encounter, infused into that instrument all the vigor essential to the accomplishment of the end for which it was designed—the happiness and salvation of the nation. That the extraordinary powers here spoken of, and contended for, are given to Congress by the Constitution, cannot be denied. The acts of Congress, recorded in the statute book, long acquiesced in by every description of citizens, afford a conclusive argument in support of the right to exercise those powers. The acts alluded to, are the embargo laid in 1794, and the several laws passed the 28th of February, 1806, and 1807, to suspend the commercial intercourse between the United States and certain parts of the Island of St. Domingo.

The embargo laid in 1794, operated alike on all vessels, whether they were or were not cleared out prior to the time it was enforced; nor has such a distinction ever received the sanction of any nation, the peculiarity of whose situation imposed an embargo, as an act of imperious necessity.

With equal grace, and the same justice, could the farmer and planter, the mechanic and manufacturer, put in their claim to exemption from the sacrifices which they are offering on the altar of patriotism: assigning as a reason for the exemption, that the products and articles of their respective vocations were the acquisitions of their skill and industry, previous to the existence of the act laying an embargo, and that they have the right, if they should think proper to exercise it, to export those products and articles to foreign markets. If the position of the memorialists be sound, it would be absurd in the extreme ever to lay an embargo, as it never could be brought into action at the time when all the energies of such a measure were required for the public safety and welfare.

Were vessels permitted to proceed on foreign voyages, Congress would deservedly merit censure for inconsistency, and for wanting dignified stability and firmness in the day of trial. The committee can never be induced to recommend a policy, nerveless, and without a character, while they maintain a due regard and devotion to national honor and to national interest.

The attention of the committee having been directed to the memorial of the merchants and traders of Philadelphia, by an order of the House of Representatives, they feel themselves constrained, in deciding on the embargo cases before them, to take a transient view of the causes which led to that measure, and to express their opinion of the necessity imposed on the United States of adhering to it, until proper assurances are given, that their neutral rights shall be respected. Those who have bestowed any thought on the state of affairs in Europe, must have contemplated as probable a measure of this kind on the pressure of inauspicious events.

The love of domination and the cupidity of commercial monopoly have regularly and undeviatingly been producing and maturing this extraordinary crisis, in which, without their accord, the United States are unhappily involved. If a wise and prudent policy, tolerating and countenancing no measures or practices that could compromit the peace or interrupt the harmony of the United States with any of the belligerent nations of Europe, could have preserved to them the advantages of an honest and impartial neutrality, our citizens and merchants would not now be lamenting that languor and inactivity produced by a suspension of commerce. Congress had it in its option either to permit the continuance of commerce, or to resort to the secure and precautionary measure of an embargo. If the continuance of commerce had been preferred, Congress, from the existing state of things, would have been compelled, with an inadequate marine force, to afford some sort of protection to it, or to allow private ships to arm for their defence. If such a step had been taken, war must have ensued; if resistance to the execution of the decree of France, bearing date the 21st November, 1806, or of such orders as should be issued by the British Cabinet, in conformity to the retaliating power contended for in the note of Lord Howick to Mr. Monroe, of 10th January, 1807, and of the proclamation of the 16th October, 1807, could produce it. In this state of affairs between the United States and the nations of Europe, a permission to arm private ships would be tantamount to a declaration of war. Individuals who had been injured by either of the nations, or who might be influenced by narrow prejudices, or short-sighted views, would have it in their power to plunge the United States, without their consent, into a war with one of the belligerent nations, and to pave the way to an alliance with the other. From these considerations a preference was given to the embargo. On the 18th December, 1807, the President of the United States addressed a confidential Message, since published, to the Senate and House of Representatives, as follows: "The communications now made, showing the great and increasing dangers with which our vessels, our seamen, and our merchandise, are threatened, on the high seas and elsewhere, from the belligerent Powers of Europe; and it being of the greatest importance to keep in safety these essential resources, I deem it my duty to recommend the subject to the consideration of Congress, who will doubtless perceive all the advantages which may be expected from an inhibition of the departure of our vessels from the ports of the United States."

This Message from the Executive Magistrate, whose province it is to preside over our foreign relations, received from Congress that immediate and prompt attention which was due to its importance.

The evidences of dispositions manifested, and of measures adopted, and in execution, by the belligerent nations, left no doubt on the mind of the certain prostration of neutral commerce. The embargo was laid, as being the safest course. It was considered as the best means that could be resorted to for the protection of our citizens, and for the preservation of our vessels and merchandise. It was a measure that resulted from much deliberation. That it is the best which Congress could devise or adopt, is the solemn and profound con-

viction of the committee, on a review of the whole ground. No charge of partiality can be brought against it, as all nations are placed on an equal footing, their vessels being at liberty to enter our ports, and to depart at pleasure. The embargoes laid in Europe, since the year 1793, never excepted from detention American vessels. The belligerent nations cannot raise the voice of complaint, as their injustice has made this precautionary measure an act of necessity. Should the embargo be rigidly persevered in, the advantages to be derived from its adoption will amply repay all the sacrifices made to obtain them. New and important treasures, heretofore neglected, will be brought to light, and, what is more important, into use. The United States, regenerated by their own energies, will acquire a confidence in, and a reliance on, their own resources, without which it is in vain to endeavor to give effectual and commanding protection to the rights of the citizens and those of the Republic. The embargo, by teaching foreign nations the value of American commerce and productions, will inspire them with dispositions to practice justice. They depend on this country for articles of the first necessity, and for raw materials to supply their manufactories. The embargo will have no inconsiderable influence in breaking those municipal fetters which circumscribe the motions and liberty of commerce.

The committee are persuaded that the National Legislature has endeavored sedulously to perform the duties assigned to it by the Constitution in a manner to comport with the honor and welfare of a great and free people. The stand which a deliberate and dispassionate judgment recommended and approved, has been taken. The issue is in the hands of that God, who has never ceased pre-eminently to manifest his love to these United States; and whatever may be that destiny which His all-wise and superintending Providence has allotted for them; whether it is to be their happy lot to arrive at that destiny under the guidance and auspices of peace; or whether it is decreed that they shall pierce through war to reach it, to acquiesce with dignity and firmness becomes a duty. Despair can never dwell in the bosom of liberty. That God who led the United States victorious to independence, has given strength to, and inspired them with courage to maintain and to perpetuate it.

The committee recommend the adoption of the following resolution:

Resolved, That the prayer of the memorialists, merchants and traders of the city of Philadelphia, is unreasonable and ought not to be granted.

After some observations against immediately deciding on this report by Messrs. Milnor and Lyon, and by Mr. Newton in answer, on the suggestion of Mr. Smilie, the report was referred to a Committee of the Whole on Wednesday next.

GENERAL WILKINSON.

On motion of Mr. Randolph, the House took up for consideration the resolution submitted by him a few days since, relative to the conduct of Brigadier General James Wilkinson.

Mr. Clark laid upon the table the statement which he had been requested to make by a resolution of the House on Thursday last. The statement is as follows:

In obedience to the direction of the House of Representatives, expressed in their resolution of Friday last, I submit the following statement:

I arrived from Europe at New Orleans in December, 1786, having been invited to the country by an uncle of considerable wealth and influence, who had been long resident in that city. Shortly after my arrival, I was employed in the office of the Secretary of the Government—this office was the depository of all State papers. In 1787, General Wilkinson made his first visit to New Orleans, and was introduced by my uncle to the Governor and other officers of the Spanish Government.

In 1788, much sensation was excited by the report of his having entered into some arrangements with the Government of Louisiana to separate the Western country from the United States, and this report acquired great credit upon his second visit to New Orleans in 1789. About this time I saw a letter from the General to a person in New Orleans, giving an account of Colonel Connolly's mission to him from the British Government in Canada, and of proposals made to him on the part of that Government, and mentioning his determination of adhering to his connexion with the Spaniards.

My intimacy with the officers of the Spanish Government and my access to official information disclosed to me shortly afterwards some of the plans the General had proposed to the Government for effecting the contemplated separation. The general project was, the severance of the Western country from the United States, and the establishment of a separate Government in the alliance and under the protection of Spain. In effecting this, Spain was to furnish money and arms, and the minds of the Western people were to be seduced and brought over to the project by liberal advantages resulting from it, to be held out by Spain. The trade of the Mississippi was to be rendered free, the port of New Orleans to be opened to them, and a free commerce allowed in the productions of the new Government with Spain and her West India islands.

I remember about the same time to have seen a list of names of citizens of the Western country which was in the handwriting of the General, who were recommended for pensions, and the sums were stated proper to be paid to each; and I then distinctly understood that he and others were actually pensioners of the Spanish Government.

I had no personal knowledge of money being paid to General Wilkinson or to any agent for him, on account of his pension, previously to the year 1793 or 1794. In one of these years, and in which I cannot be certain until I can consult my books, a Mr. La Cassagne, who I understood was Postmaster at the Falls of Ohio, came to New Orleans, and, as one of the association with General Wilkinson in the project of dismemberment, received a sum of money, four thousand dollars of which, or thereabout, were embarked by a special permission, free of duty, on board a vessel which had been consigned to me, and which sailed for Philadelphia, in which vessel Mr. La Cassagne went passenger. At and prior to this period I had various opportunities of seeing the projects submitted to the Spanish Government, and of learning many of the details from the agents employed to carry them into execution.

In 1794, two gentlemen of the names of Owens and Collins, friends and agents of General Wilkinson, came to New Orleans. To the first was entrusted, as I was particularly informed by the officers of the Spanish Government, the sum of six thousand dollars, to be delivered to General Wilkinson on account of his own pension, and that of others. On his way, in returning

to Kentucky, Owens was murdered by his boat's crew, and the money it was understood was made away with by them. This occurrence occasioned a considerable noise in Kentucky, and contributed, with Mr. Power's visits at a subsequent period, to awaken the suspicion of General Wayne, who took measures to intercept the correspondence of General Wilkinson with the Spanish Government, which were not attended with success.

Collins, the co-agent with Owens, first attempted to fit out a small vessel in the port of New Orleans, in order to proceed to some port in the Atlantic States; but she was destroyed by the hurricane of the month of August of 1794. He then fitted out a small vessel in the Bayou St. John, and shipped in her at least eleven thousand dollars, which he took round to Charleston.

This shipment was made under such peculiar circumstances that it became known to many, and the destination of it was afterwards fully disclosed to me by the officers of the Spanish Government, by Collins, and by General Wilkinson himself, who complained that Collins instead of sending him the money on his arrival had employed it in some wild speculations to the West Indies, by which he had lost a considerable sum, and that in consequence of the mismanagement of his agents he had derived but little advantage from the money paid on his account by the Government.

Mr. Power was a Spanish subject, resident in Louisiana, till the object of his visits to the Western country became known to me in 1796, when he embarked on board the brig Gayoso, at New Orleans for Philadelphia, in company with Judge Sebastian, in which vessel, as she had been consigned to myself, I saw embarked under a special permission four thousand dollars or thereabout, which, I was informed, were for Sebastian's own account, as one of those concerned in the scheme of dismemberment of the Western country.

Mr. Power, as he afterwards informed me, on his tour through the Western country, saw General Wilkinson at Greenville, and was the bearer of a letter to him for the Secretary of the Government of Louisiana, dated the 7th or 8th March, 1796, advising that a sum of money had been sent to Don Thomas Portell, commandant of New Madrid, to be delivered to his order. This money Mr. Power delivered to Mr. Nolan, by Wilkinson's directions. What concerned Mr. Nolan's agency in this business I learned from himself, when he afterwards visited New Orleans.

In 1797, Power was entrusted with another mission to Kentucky, and had directions to propose certain plans to effect the separation of the Western country from the United States. These plans were proposed and rejected, as often solemnly assured me, through the means of a Mr. George Nicholas, to whom among others they were communicated, who spurned the idea of receiving foreign money. Power then proceeded to Detroit to see General Wilkinson, and was sent back by him under guard to New Madrid, from whence he returned to New Orleans. Power's secret instructions were known to me afterwards, and I am enabled to state that the plan contemplated entirely failed.

At the periods spoken of, and for some time afterwards, I was resident in the Spanish territory, subject to the Spanish laws, without an expectation of becoming a citizen of the United States. My obligations were then to conceal, and not to communicate to the Government of the United States the projects and enterprises which I have mentioned of General Wilkinson and the Spanish Government.

In the month of October, of 1798, I visited General Wilkinson by his particular request at his camp at Loftus' heights, where he had shortly before arrived. The General had heard of remarks made by me on the subject of his pension, which had rendered him uneasy, and he was desirous of making some arrangements with me on the subject. I passed three days and nights in the General's tent. The chief subjects of our conversation were, the views and enterprises of the Spanish Government in relation to the United States, and speculations as to the result of political affairs. In the course of our conversation, he stated that there was still a balance of ten thousand dollars due him by the Spanish Government, for which he would gladly take in exchange Governor Gayoso's plantation near the Natchez, who might reimburse himself from the treasury at New Orleans. I asked the General whether this sum was due on the old business of the pension. He replied that it was, and intimated a wish that I should propose to Governor Gayoso a transfer of his plantation for the money due him from the Spanish treasury. The whole affair had always been odious to me, and I declined any agency in it. I acknowledged to him that I had often spoken freely and publicly of his Spanish pension, but told him I had communicated nothing to his Government on the subject. I advised him to drop his Spanish connexion. He justified it heretofore from the peculiar situation of Kentucky; the disadvantages the country labored under at the period when he formed his connexion with the Spaniards; the doubtful and distracted state of the Union at that time, which he represented as bound together by nothing better than a rope of sand. And he assured me solemnly that he had terminated his connexions with the Spanish Government, and that they never should be renewed. I gave the General to understand that as the affair stood, I should not in future say anything about it. From that period until the present I have heard one report only of the former connexion being renewed, and that was in 1804, shortly after the General's departure from New Orleans. I had been absent for two or three months, and returned to the city not long after General Wilkinson sailed from it. I was informed by the late Mayor, that reports had reached the ears of the Governor, of a sum of ten thousand dollars having been received by the General, of the Spanish Government, while he was one of the Commissioners for taking possession of Louisiana. He wished me to inquire into the truth of them, which I agreed to do, on condition that I might be permitted to communicate the suspicion to the General, if the fact alleged against him could not be better verified. This was assented to. I made this inquiry, and satisfied myself by an inspection of the treasury-book for 1804, that the ten thousand dollars had not been paid. I then communicated the circumstance to a friend of the General, (Mr. Evan Jones,) with a request that he would inform him of it. The report was revived at the last session of Congress, by a letter from Colonel Ferdinand Claiborne, of Natchez, to the Delegate of the Mississippi Territory. A member of the House informed me that the money in question was acknowledged by General Smith to have been received at the time mentioned, but that it was in payment for tobacco. I knew that no tobacco had been delivered, and waited on General Smith for information as to the receipt of the money, who disavowed all knowledge of it; and I took the opportunity of assuring him, and as many others as mentioned the subject, that I believed it to be false, and gave them my reasons for the opinion.

This summary necessarily omits many details tending to corroborate and illustrate the facts and opinions

I have stated. No allusion has been had to the public explanations of the transaction referred to, made by General Wilkinson and his friends. So far as they are resolved into commercial enterprises and speculations, I had the best opportunity of being acquainted with them, as I was, during the time referred to, the agent of the house who were consignees of the General at New Orleans, and who had an interest in his shipments, and whose books are in my possession.

DANIEL CLARK.

Washington City, *Jan.* 11, 1808.

District of Columbia, *to wit:*
January 11, 1808.

Personally appeared before me, William Cranch, chief judge of the circuit court of the District of Columbia, Daniel Clark, Esq., who being solemnly sworn on the Holy Evangelists of Almighty God, doth depose and say, that the foregoing statement made by him, under the order of the House of Representatives, so far as regards matters of his own knowledge, is true, and so far as regards the matters whereof he was informed by others, he believes to be true. W. CRANCH.

Mr. Rowan moved to amend the resolution under consideration by striking out all that part after the word "Resolved," and inserting the following:

Resolved, That a special committee be appointed to inquire into the conduct of Brigadier General James Wilkinson, in relation to his having, at any time whilst in the service of the United States, corruptly received money from the Government of Spain or its agents, and that the said committee have the power to send for persons and papers, and compel their attendance and production—and that they report the result of their inquiry to this House.

The Speaker declared the amendment to be a substitute, and of course not in order.

Mr. Randolph said he was decidedly of opinion, that the gentleman from Kentucky ought to have an opportunity of taking the sense of the House on his motion; he therefore withdrew the resolution under consideration: when

Mr. Rowan moved the resolution as above stated.

Mr. Bacon said, notwithstanding the evidence which had just been read, he would give the reasons why he could not yet vote for this House to act in any manner on this subject, more especially as proposed by this resolution. It was not to be concealed that the impressions made upon his mind by the statement of the gentleman from New Orleans were very considerable; but the impressions which that or any other statement were calculated to make, were very different from the question of what it was their duty to do in relation to it. He hoped that they would not be so much impressed by it (for it contained a great deal he must confess) as to suffer it to impel them into a path wide of their Constitutional limits. He did not mean to express a definite sentiment as to the guilt or innocence of the officer involved.

He would not, under the privilege of his seat, on the one hand blazon the merits of General Wilkinson to the world, nor on the other, declare that he had sufficient evidence of his guilt. He would leave it to the unbiassed decision of the proper tribunal.

Mr. B. observed the other day, and would now repeat it, that it was not within their power to adopt the resolution then under consideration, or that now offered by the gentleman from Kentucky. He then and now conceived that the offence with which General Wilkinson was charged, might be cognizable by more than one department—certainly by the Executive, from his being a military officer. He could say nothing about the inquiry now instituted one way or the other; for if the Constitution did not authorize them to complete an inquiry they had no right to interfere with it, being the exclusive province of the Executive. It struck him further, that if the facts in this statement should be proven on a full examination to be true (and he did not call its correctness in question for he had heard the same things from other people,) he could not see why it was not a case cognizable by a judicial tribunal. The Constitution expressly forbade any person holding an office under the United States to take a pension or donation from a foreign Power. The act of receiving money from a foreign Power, therefore—the charge made against General Wilkinson—was a crime against the supreme law of the land, and cognizable by the judicial authority. If, therefore, we could, as proposed, instruct, request, or in any manner interfere with the Executive with respect to that portion of the inquiry which appertains peculiarly to the Executive, as the only power competent to remove this officer, why may we not in the same manner interfere with the jurisdiction or cognizance of the Supreme Court? He could see no difference; with equal justice they could interfere with one as with the other.

Gentlemen who were in favor of an inquiry in this form, could not have considered the subject so maturely as they ought. This was a Government of distributive powers. One class had been delegated to the Representative body, one to the Executive, and another to the Judiciary. If they once began each to invade the other's jurisdiction, the distributive system was destroyed. It has been said, that we are the Representatives of the people; that it is our duty to see that the Republic take no harm. This expression was calculated perhaps to captivate the public ear, and acquire popularity, as well as to captivate the House. But whatever they might think of what ought to have been provided, they ought to consider what was. I do not think, because we may on this, or any other occasion, suppose that we could do a great deal of good, we ought to take any steps towards effecting an object until we contemplate our particular powers in relation to that object. It has been said that this House is the grand inquest of the nation. I do not know what is meant by this expression; but, if I understand the meaning of the term, it conveys the same meaning as grand jury. Now, Mr. B. said, he could not agree to any position that this House was legitimately, on general subjects, the grand inquest of the nation. With respect to impeachments, and in that case alone, were they the grand jury, for then the two Houses acted in a judicial capacity—this

House being the grand inquest to inquire, and the Senate being the petit jury to judge of their presentment. Now, if this House were the grand inquest to inquire into this, or a similar case, in which an inquiry might seem to be conducive to the interest of the nation, and were to present a result, where was the jury to judge of the truth of their verdict? Was it to be tried by the Senate? That was not pretended to be the course.

On all these accounts, therefore, whatever was the impression which the paper this morning laid on the table might be calculated to produce on their minds, he thought they ought sedulously to attend to the Constitutional limits of their duty, and not conclude, merely because they might in any case act beneficially, that they had the power to act in such case.

He had before observed, that he would not express an opinion; but he would say that an inquiry ought to be had; it will, it must be had, and it should be a full and impartial inquiry. If the inquiry which had been instituted were but the semblance of an inquiry, for one it would not satisfy him, or the people, or the nation; it ought not to satisfy them. Gentlemen had said that a military court of inquiry would not be competent. Mr. B. did not know what might be their particular power as to sending for persons; but if that court had not sufficient power, it was in the power of the House to clothe them with it. He thought they might, though he would not say that they ought to do this. As a court of inquiry might have been, or could be, clothed with this power; and, adverting to what he had before said, that it was a case cognizable by a judicial tribunal; and if so, that a judicial tribunal had all the power that this House could exercise in any criminal case, and more than they had in this, he should vote against every resolution going to express a conviction that this House had any power or right whatever to act on a subject solely within the Constitutional right of the Executive or judiciary.

Mr. RANDOLPH said, if the gentleman who had just sat down had not given his hasty impressions, but left his good understanding free to operate, his objections to the resolution would have vanished. The great mistake made by every gentleman who opposed this measure on Constitutional grounds, was this: that they looked upon an inquiry made by this House through the organ of one of its committees, as leading to the punishment of the individual implicated, and that where this House was not competent to inflict punishment, it was incompetent to make inquiry; this was the great stumbling-block which had impeded their apprehension. But he would ask the gentleman from Massachusetts whether this House was not competent to make an inquiry for its own legislative guidance? Was it not competent, as well in its capacity of supervisor of the public peace, as to obtain a guide for its own actions, to inquire into this matter? Was not the House clothed with the power of disbanding the Army? Now, suppose a committee of the House, upon inquiry, were to report, perhaps, that not only the Commander-in-Chief, but the whole mass of the Army, were tainted with foreign corruption, or were abettors of domestic treason, could any man assign to himself a stronger reason than this for breaking an Army on the spot? Did not the gentleman know, or rather did he not feel, that this House had the right of refusing the supplies necessary for the Army? And could a stronger reason be given for a refusal to pass the military appropriation bill than that they were nourishing an institution which threatened our existence as a free and happy people? Let me, if it is in order, ask the gentleman from Massachusetts to turn his attention to the proceeding of which we have official notice in another branch of the National Legislature, an inquiry into the conduct of one of its own members. Did they not all know that that man's offence was punishable by a civil tribunal? But the inquiry was not there made with a view to a trial, not to usurp the powers of the judiciary, but to direct that body in the exercise of its acknowledged legislative functions. Inasmuch as they possessed the power to expel one of their own members, to amputate the diseased limb, they possessed the power, and exercised it, to make an inquiry. Now, the gentleman from Kentucky had just as much right to institute an inquiry which might lead to the exercise of the legislative powers of this House, which might cause the disbanding of the present Army, the erection of another, or the refusal of supplies, as to institute an inquiry into the conduct of a member with a view to his expulsion, or of an Executive officer, with a view to impeach him before the Senate.

Mr. R. therefore presumed that any inquiry which this House might choose to make into the conduct of any officer, civil or military, was not an interference with the powers of any of the coordinate branches of Government; they were left free to move in their own orbits. If a crime had been committed against the statute law of the United States by such officer, the judiciary were as free to punish it as it was free to punish a member of this House, into whose conduct, upon suspicion of treason or misdemeanor, inquiry had been made with a view to his expulsion. The Executive likewise was left free to exercise his discretion; he was left free to dismiss this officer, to inquire into his conduct himself, either with his own eyes or ears, or by a military court; to applaud or censure.

Did they take possession of the body of this officer by an inquiry into his conduct? Did they interfere with the court of inquiry now on foot, but totally incompetent to the object? Gentlemen, indeed, had said, that if that court did not possess the power of compelling the attendance of witnesses, we might clothe it with that power. In expressing this opinion, the gentleman from Massachusetts had not been more considerate than in expressing his first opinion. Could any one conceive a more dreadful or terrible instrument of persecution than a military court clothed with the power to coerce the evidence and the production of papers of private citizens? Clothe them

with this power, and there is not a man in the United States who may not be compelled to go, at whatsoever season, to the remotest garrison, on whatsoever trifling occasion, at the will of a court martial, or a court of inquiry, leading to the establishment of a court martial.

In the course of the present year, Mr. R. said it had been his lot to receive, from no dubious or suspicious source, information touching—not to be sure the immediate subject on which an inquiry had been moved by the gentleman from Kentucky, but one intimately and closely connected with it. He meant the project, through the instrumentality of the Army of the United States, to dismember the Union; and he had no hesitation in saying—and it had been the opinion of a large majority, if not of every one of those of whom he had been a colleague—that the Army of the United States was tainted with that disease; and that, so far from the Army of the United States having the credit of suppressing that project, the moment it was found that the courage of that Army had failed, the project was abandoned by those who had undertaken it, because the agency of the Army was the whole pivot on which that plot had turned! This was in evidence before the grand jury, who had the subject in cognizance last Spring. He said that these conspirators were caressed at the different posts of the United States, in their way down the river, and by officers of no small rank, that they received arms from them, and the principal part of the arms these men had with them was taken from the public stores; and under a knowledge of these circumstances, was he not justified in the belief that the whole Army of the United States was connected in the project? He did not mean every individual, for there were some who could not be trusted, and some who were at posts too far distant to be reached. That those who were confidants of the Commander-in-Chief were interested in the conspiracy, no man who knew anything of the circumstances could doubt. He, therefore, thought that the resolution moved by the gentleman from Kentucky was every way reasonable. Indeed, he did not know whether the resolution should not be so varied as to embrace not only a charge of that nature, but all whatsoever.

Before he sat down, he should have it in his power to give to the House something certainly very much resembling evidence in support of the justice of his suspicions on this subject. On the 26th of January last, the House would perceive by the Journals, a Message was received from the President of the United States, "transmitting further information touching an illegal combination," &c., printed by order of the House, and which he now held in his hand. In this Message is contained the following affidavit:

"I, James Wilkinson, Brigadier General and Commander-in-Chief of the Army of the United States, to warrant the arrest of Samuel Swartwout, James Alexander, Esq., and Peter V. Ogden, on a charge of treason, misprision of treason, or such other offence against the Government and laws of the United States, as the following facts may legally charge them with, on the honor of a soldier, and on the Holy Evangelists of Almighty God, do declare and swear, that, in the beginning of the month of October last, when in command at Natchitoches, a stranger was introduced to me by Colonel Cushing, by the name of Swartwout, who, a few minutes after the Colonel retired from the room, slipped into my hand a letter of formal introduction from Colonel Burr, of which the following is a correct copy:

"PHILADELPHIA, 25*th July*, 1806.

"DEAR SIR: Mr. Swartwout, the brother of Colonel S., of New York, being on his way down the Mississippi, and presuming that he may pass you at some post on the river, has requested of me a letter of introduction, which I give with pleasure, as he is a most amiable young man, and highly respectable from his character and connexions. I pray you to afford him any friendly offices which his situation may require, and beg you to pardon the trouble which this may give you.

"With entire respect, your friend and obedient servant, "A. BURR.

"His Exc'y GEN. WILKINSON."

"Together with a packet, which he informed me he was charged by the same person to deliver me in private. This packet contained a letter in cipher from Colonel Burr, of which the following is, substantially, as fair an interpretation as I have heretofore been able to make, the original of which I hold in my possession."

Mr. RANDOLPH said he should certainly have abstained from noticing the circumstance he was about to mention, and which he had believed to be of general notoriety, had it not been, that, within a very few days past, a gentleman, (with whom Mr. R. was in habits of intimacy, and whose means of information were as good as those of any member of the House,) to his utter surprise, informed Mr. R. that he was totally ignorant of the fact.

Mr. R. said he held in his hand an actual interpretation of this ciphered letter, which was made in the grand-jury room at Richmond, by three members of that body, for their use, and in their presence; and it was necessary here to state, that so extremely delicate was General Wilkinson, that he refused to leave the papers in possession of the grand jury: whenever the jury met, they were put into their hands, and whenever they rose, the witness was called up, and received them back again. Here was a copy—rather a different one from that which, "On the honor of a soldier, and on the Holy Evangelists of Almighty God," was as fair an interpretation as General Wilkinson was able to make. A comparison of the two would throw a little light on the subject. In the printed copy of the last session might be read "I (Aaron Burr) have actually commenced the enterprise—detachments from different points," &c. In the original the words had been scratched out with a knife so as to cut the paper—"I have actually commenced"—not the enterprise, but "the Eastern detachments." Now mark; by changing the word *Eastern* into *enterprise*, and moving the full stop so as to separate *Eastern* from its substantive *detachments*, the important fact was lost, that, as there were Eastern detachments under Colonel Burr, there must have been *Western* detachments under somebody else! Now, with a dictionary in his hand, could any man change "Eastern" into "enterprise," and

move the full stop, under an exertion of the best of his ability? Again: the printed copy says, "everything internal and external favors views;" the original has it "favors *our* views." The word "our" perhaps could not be found in any English dictionary! The printed version says again, "The project [this is the best interpretation upon his oath which a party who had never suffered the papers to go out of his hand could make] is brought to the point so long desired." The real interpretation is "the project, my *dear friend*, is brought to the point so long desired."

Mr. R. said, exclusive of other and direct evidence, tending to show the dependence which these conspirators put on the Army of the United States and that it was eventually their sole hope and support, and that the moment they found they were to be deprived of it they changed their purpose—exclusive of this, and that the conspirators were received at Massac and the other forts below, and of their there getting arms and stores, there was something in this suppression of words in the letter that spoke to his mind more forcibly than volumes of evidence, the implication of a man, who, had he been innocent, would have given all the evidence in any letter he professed to interpret. This suppression did certainly convey to the mind of Mr. R. an impression, which he had never attempted to conceal, of the guilt not only of the principal but of many of the inferior officers of the Army. But guilt is always short-sighted and infatuated. Not content with that dubious sort of faith which it might sometimes acquire when not brought to the trial, it had attempted not only to occupy the middle ground of doubt and suspicion, but to clothe itself with the reputation of the fairest character in the country, and in so doing, had torn the last shred of concealment from its own deformity. It stood now exposed to the whole people of the United States; and he left the House to say whether they would shut their eyes and ears, as they had been almost invited to do, against conviction.

Mr. SMILIE wished to know of the gentleman from Virginia whether there was not a motion before the grand jury to find a bill against General Wilkinson?

Mr. RANDOLPH said he had introduced this subject in order to suggest to the gentleman from Kentucky the propriety of modifying or amending his resolution. He would now give the information required by the gentleman from Pennsylvania, and hoped he should not be considered as intruding on the time of the House in so doing.

There was before the grand jury a motion to present General Wilkinson, for misprision of treason. This motion was overruled upon this ground: that the treasonable (overt) act having been alleged to be committed in the State of Ohio, and General Wilkinson's letter to the President of the United States having been dated, although but a short time, prior to that act, this person had the benefit of what lawyers would call a legal exception, or a fraud. But, said Mr. R., I will inform the gentleman, that I did not hear a single member of the grand jury express any other opinion than that which I myself expressed of the moral (not of the legal) guilt of the party.

Mr. SMILIE said he would not detain the House on this subject; he had the other day taken an opportunity to state his sentiments on the subject, that in his opinion there was no power in the House to proceed in the business. The same sentiments he yet entertained; and when gentlemen told him that it was necessary for the public safety that this House should exercise such powers, and at the same time they could not point out a single expression in the Constitution vesting the House with this power, he could not consent to vote with them: nor had a single gentleman who had spoken, attempted to show that they did possess these powers. The gentleman from Virginia had spoken of their power to disband the Army; if the gentleman chose to bring forward a resolution for that purpose, Mr. S. said he would meet him. He had also told them that they had a power to refuse supplies: Mr. S. said he agreed with the gentleman in this: but when they stepped out of the road, and assumed a power not vested in them, he could not go along with the gentleman. Was it not the duty of the President alone to inquire, who possessed full power to act on the information which might be the result of an inquiry? Certainly it was. The officer interested in this discussion was undoubtedly subject to trial by a court martial, and no doubt also by a court of justice; for if he was guilty of the crimes laid to his charge, they were of a high nature, and would subject him to the cognizance of the civil law.

But he would ask gentlemen, if they succeeded in passing the resolution upon the table, what was next to be done? Did the House believe that they could remove or punish a military officer for misconduct? If they could not do this, and he presumed no gentleman would contend for this, Mr. S. could see no reason for an inquiry. Were they to become mere juries for a court of justice—mere collectors of evidence—for it was admitted that they could not act upon it after it was collected? He believed the courts of justice were possessed of sufficient authority without this House volunteering their assistance.

Mr. S. remarked what would be the effect of this motion, which was substantially the same as that proposed by the gentleman from New York, and rejected by a large majority. It would answer the purpose of holding up this man to suspicion for years to come, for aught he knew, without producing any other effect. He was willing to inquire; he had seen from the beginning of the business that an inquiry must take place. There had been a number of papers laid upon the table relative to this; he was willing to transmit them to the proper department, there to be made use of, and he hoped the House would go no further. For in regard to the proceedings which had taken place they had exercised a right which did not appertain to them in proceeding in the business at all; they had no right to beset the character of the man; and he rested his objections on this point, that no man could show him an author-

ity for it. He was very sorry, because he thought it would produce effects of a serious nature, to hear a gentleman this day denounce the Army as corrupted throughout. He must tell that gentleman that he could not credit the assertion. They had tried (without meaning to express any opinion as to the officer now involved) their officers and found them trusty. And to hold them up as unworthy of trust at this time, in a crisis like the present, was impolitic and unjust. If gentlemen knew of any particular officers who were corrupt, why could and did they not lodge information against them, not by clamor here, but by proof before the proper authority?

Mr. S. in conclusion declared that he should not vote for this resolution; for, in any way, a procedure by this House on the subject would be incorrect.

Mr. Rhea, of Tennessee, called for the reading of the letter of —— Duncan, contained in the evidence laid before the House this session relative to the late trial at Richmond; it might be satisfactory in explaining the differences between the version of the ciphered letter by the grand jury and the translation made by General Wilkinson.

Mr. Love said, that although the form of the question had been varied, by the resolution of the gentleman from Kentucky, (Mr. Rowan,) yet the principles of decision remained nearly the same as on the original resolution; the same objections applied, as to the subject embraced by the present form, and, so long as it thus remained, those objections would continue to influence his determination.

These grounds of difficulty had been attempted to be removed by the gentleman from Virginia, (Mr. Randolph,) by arguing, that the investigation of the subject might lead to measures, which no one would doubt, it was competent to the House to act on. By pursuing the inquiry, it was said, it might be found that it would be expedient to disband the Army, or withhold its necessary supplies: this, said Mr. L., is begging the question. The terms of the resolution, in their present shape, cannot possibly conduct a committee to any such inquiry: it is confined to a single object; it is, whether the present commander of the Army has been guilty of corruptly receiving money from Spain. The charge alluded to is understood to be of an ancient date; it is not suggested by any one that the Army is tainted with this crime, specially set forth in the resolution: the charge, if proven, could not then be a cause for disbanding the Army, or withholding the necessary supplies. If an object of this kind is contemplated let it be so stated, and an inquiry into the grounds of such proposition, however strange in idea, would only be the exercise of a Constitutional right.

The resolution, Mr. L. repeated, called the attention of the House to a single fact, it exhibited a charge already made penal, both by the military and civil code; it respects a character over whom we have no Constitutional control, by impeachment or otherwise. If an improper character is commissioned to the command of our armies, and continues so, let the responsibility fall where the Constitution has placed it, on the Executive; the attention of the Legislature must be called to other things than judging of the merits or crimes of the soldiery. But it is objected that the military tribunal appointed to make an inquiry on the demand of the person accused, and which the House understood was now engaged in the performance of that duty, has no power to compel the attendance of witnesses, or the production of papers. He would not for a moment so far impeach the patriotism of those gentlemen, who have declared themselves possessed of knowledge on the subject of the charge, as to suppose they would not attend the respectful summons of a tribunal erected by our own laws, for the investigation of crimes which they admit are of importance to their country. Those gentlemen surely too well understand the rights of others to object to a cross-examination; but if a military court is not possessed of a power sufficient to compel, if it should be necessary, the attendance of witnesses, the common judicial tribunals are so; the civil, as well as the martial code, has cognizance of such offences as are suggested; the same effect as it respects a military officer, would follow the establishment of guilt before either tribunal. If gentlemen object to a military court, which the law has instituted, let them resort to a civil one; it is there they may without apprehension or difficulty make those disclosures, which the good of their country requires: it is not here that a power is found, either to prosecute or punish the offences of military men. He hoped the time of this Legislature would be better employed than in the usurpation of the powers of the Judiciary or Executive, in the investigation of criminal charges, against military men, whom they could neither hear the defence of, nor punish their crime, if proved.

Mr. L. said, that as to the truth and weight of the charges made against the military character in question, he felt no disposition to decide; to determine a man guilty of crimes of great enormity, without a hearing, without examination or testimony, and without a possibility of defence, was so hostile to every principle of justice, and common humanity even, that he had not permitted his mind to enter into any investigation of fact, or his feelings to enlist in the prosecution; much detail of circumstance had been used, which ought to put the House extremely on its guard against the influence of feeling in deciding the present question. A gentleman had the other day said, that he felt no delicacy towards a man, whom he had on his oath been obliged to say was guilty of misprision of treason; it was thus intimated that the grand jury of Virginia district, who investigated the subject of Burr's conspiracy, had agitated the question of General Wilkinson's criminality; (setting aside the observation which might well be made that Burr's conspiracy was no part of the present inquiry) it appeared to Mr. L., that the question having been agitated, and no presentment being made of the officer now charged, a considerable portion of the grand jury, must have said in like manner, on their oaths,

that that officer was not guilty of misprision of treason; but to-day the same gentleman has informed us, that the reason why no presentment was preferred against Wilkinson was, that he escaped by a legal exception in his favor: that although the immorality of his act was complete, (as well as he could understand the gentleman at the distance he was from him,) the offence could not be located, or some other legal defect. Mr. L. said he confessed he was not well informed of the proceedings of the grand jury, he had heard some noise which he had scarcely listened to about them: he had never before heard, that the principal officers of the Army were leagued in Burr's conspiracy: he would say, however, that the grand jury assembled on that occasion, was as able and respectable a one as ever sat on any former occasion of the kind, and he confessed, he was surprised to hear they had omitted to exercise a general power, which, when it appeared to them, the officers of our army were actually conspirators against the Government, as we are now informed, it became imperiously their duty to exercise, by making a presentment of the dangers of the country: any general evil a grand jury may present, if they believe it to exist only in intention. The acts of a legislative body, and some he believed of Congress itself, had been presented by grand juries as of evil tendency; and one instance at least has occurred of a grand jury having presented the very court which presided over it. Certainly such an evil as a general conspiracy of the officers of our Army required some public exhibition of the offence; even if it was such in them as well as the commander, as not to be brought, in the opinion of the jury, within the form of an efficient prosecution. Mr. L. said, he was sorry that he too had been led into the notice of facts by the surprising things he had heard. He hoped unnecessary delay would be avoided. The time occupied in the discussion of this dispute had already, he would presume, prevented some of the committees from reporting on subjects of the first consideration. The present eventful and threatening aspect of foreign affairs demanded attention; he particularly apprehended it might have prevented the report of the bill for arming the militia, as well as other subjects of national interest, from being taken up. Let us then, said Mr. L., meet this question, decide upon it, and send to the proper departments the information which will enable them to act in the manner we are told they have attempted, under the laws in existence. The question which they solely ought now to consider was their right to act. He believed there was no man in that House who did not, after what had been said, wish a thorough investigation, but certainly the mode to be pursued was obvious and easy. He conceived it would be entirely sufficient if the papers and information were transmitted to the proper department, and should, if the resolution was negatived, beg leave, if he could get the floor, to offer a resolution, with a preamble, detailing the reasons which governed him in his vote, by which it might appear, that although he felt as much anxiety as any man that the proper tribunals should act on the subject, yet his objection to the present mode proposed, arose from a source above mere matters of expediency or temporary feeling.

Mr. L. then said, as it was not in order in the then stage of the debate, to propose his resolution, he would read it, in order that the House might be apprized of his views. He then concluded by reading the following resolution:

Whereas, It is a primary duty, enjoined on the House of Representatives of the United States, cautiously to avoid any encroachment on the Constitutional rights and authorities of the other departments of the Government: And according to the letter of the federal compact and the acknowledged spirit and meaning of that instrument, the several departments thereof should forever be kept separate and distinct, so that neither interfere with the powers and duties of the other: And this House being aware, that it is only by the practical observance of fundamental principles, that it can secure to itself and the people of the United States the beneficial effects resulting from a written and well defined form of Government; that to fail in such observance, would be to yield all the blessings, and advantages, which such written and well ascertained form of political institution is calculated to insure:

And whereas the Constitution of the United States has in no instance vested in this House the power of instituting or requesting the institution of an inquiry into the conduct of any military officer; but, while it has invested those powers in another tribunal, has confined the inquiries of this body to the conduct of civil officers holding authority under the United States, and has restricted the mode of such inquiry to the process by impeachment; and as the powers of a military tribunal over a military officer, are as competent to all the purposes which ought to be the objects of prosecution under martial law, as the powers of a court of impeachment are to the purposes which ought to be the objects of such court, and either the civil or military officer is alike amenable for the commission of crimes, to the regular process of law, before the judicial civil tribunals of the country, where all offences of every nature are punishable: and inasmuch as it is the opinion of this body, that, regulated by the proper sphere of their duty, they have as little right or power to request of the President of the United States the institution of an inquiry into the conduct of a person supposed to have committed an offence in the army, as they would have to request the Head of the Judiciary Department to cause an indictment to be preferred against any individual in civil society, or to see to the performance of any judicial duty whatever:

Resolved, therefore, That the papers and information laid on the Clerk's table of this House, relative to General James Wilkinson, be referred to the Secretary of the War Department of the United States.

Mr. LYON said, notwithstanding the impression made upon his mind by the statement read this day, he should vote in the same way as he should have done before he heard it, if the power of the House to make an inquiry were not called in question. He would as soon cut off his right hand as to say that this House had not the power to call in question the conduct of the Commander-in-Chief. Was this House prepared to say that they had not the power to inquire whether or

not the Commander-in-Chief has sufficiently the confidence of the people and of the Army? He would not commit himself in this way; and, after what had been urged as reasons for voting against the resolution, he could not promise how he should vote. The question was altogether varied by the motion now under consideration; the former and original question was, whether they would request the President to perform certain duties; it was now moved that they should perform these duties themselves; and he should certainly vote in favor of it, if it were contended that this House had not the power to pass it.

As to the creed of the gentleman behind him, (Mr. LOVE,) he could not subscribe to it; it was too long for his comprehension; but if it were intelligible, he would tell the gentleman behind him that he could not agree with him.

He should be satisfied to see what the court of inquiry would do in this business; and if they did not do what would satisfy the nation, he should be perfectly willing to proceed in the inquiry. He thought that then, feeling as his colleague (Mr. ROWAN) must feel, it would come properly before the House. Mr. L. had long had a suspicion of this man, and his mind was much at variance on this subject. None of his feelings would induce him to surrender the right of the House to inquire, and if this were made a general ground of opposition to the motion, he should assuredly vote for it.

Mr. TAYLOR confessed that the importance of the subject was sufficient to claim his ardent attention, and from the consideration he had given it, he was opposed to the resolution, and felt it a duty not to give a silent vote on a measure, which by the terms of the resolution offered was not to inquire on a general subject, (which even on this subject unconnected with any individual, but as he might be incidentally concerned, might be excusable) but to inquire about the conduct of a single individual; or in short and plain terms to denounce the man; a man, too, holding an office out of the immediate control of this House, amenable to other tribunals, and liable, if guilty of all that has been asserted against him, to the sentence of death, both by our civil and military courts.

This measure of denouncing an individual whom this House cannot impeach, said Mr. T., is then a new case, and one which, if adopted, will establish a precedent dangerous to this Government, dangerous to the life and liberty, the honor and reputation of the citizen, and calculated in its effects to put at hazard every institution and sacred provision in the Constitution under which we profess to act.

We shall in the first place interfere with the Executive Department—with which department the Constitution has expressly entrusted the care, the responsibility of watching over the Army; and in respect to the inquiry proposed to be made by a committee of this House, when we have made it, we can pass no sentence, we can ground no impeachment against the denounced; we should then have to come back and acknowledge our imbecility, by asking, or requesting the President to do that which we found ourselves unable to perform.

We assume to ourselves the responsibility which properly attaches to that department. I rejoice that here the maxim is monstrous and exploded, that the Executive can do no wrong; that here the ministers are not liable for the acts of the superior, but the superior accountable for the acts of his ministers and agents. If General Wilkinson is the monster in iniquity his enemies state him to be, if the President has continued him in employment after he had evidence positive of his guilt, or if, as has been charged, he has turned a deaf ear to the proof about to be offered by an ardent, a disinterested friend to his country, why has not this blazing patriotism burst out in a direct and not an indirect impeachment of the Executive? But the sense of the nation is too well known to venture at this thing. No, say the advocates of the resolution, this has nothing to do with confidence in the Executive—and yet if the Executive has a spark of that patriotism which he ought to possess, if he is not the protector and upholder of a known traitor, would he dare to disregard the information, if legally substantiated, which the gentleman from Virginia and the delegate from Orleans had laid on your table? If confidence has nothing to do with this, why did not these gentlemen hand in to that department of the Government which had the Constitutional cognizance and final control of this business, all the information they had on this subject? Why make this House the great gun from which to thunder their denunciations and fulminations against an individual, when there was a shorter and more easy way of getting at their object? A corrupt Executive would desire the very measure proposed. Interfere with his functions, assume his responsibility—what would be the result? You denounce the agent, the tool of such an Executive, (the Colonel Vernon of Cromwell, for example.) You order, or you request, that his conduct should be inquired into. Well, in obedience to your order, this corrupt Executive appoints a corrupt board of officers. The conduct is inquired into, and the accused comes out glossed over with an honorable acquittal from this court, and ready and more fitly prepared to execute the ambitious designs of his protector. Ask of the Executive why is this so? He answers, I have obeyed your orders, the responsibility is yours and not mine. This will be the effect of our travelling out of our defined orbit and taking upon ourselves what never was intrusted to us by the Constitution under which we act—already, when gentlemen say, that we are not to know that a court of inquiry is ordered in this case, but which every one does know, is now sitting—I say, already do they anticipate the result, and in a fore-handed way make it a theme of abuse against that Executive, with which they tell us confidence or diffidence has nothing to do in this question.

But to be done with these words, so offensive to the chaste ears of the supporters of this measure. Mr. T. said he would ask these gentlemen if they would allow their own judgment, views, and con-

duct to be judged of by those who by duty were compelled to decide upon the measures they proposed? They surely did not claim that infallibility which they denied to others. Well then, said he, place them in one scale, with all their acts or with any particular act, and place the Executive in the other, with all or with any of his acts. Nay, sir, take the present subject only as a criterion. Let the nation hold the balance. I have no hesitation in saying their scale would kick the beam. This I am compelled to say; I have more confidence in the present Administration than I have in those who brought forward and now support the presentation. I seek for nothing but truth—I would not kiss my hand for anything that the Executive could do for me or mine. I am not one of those politicians who expect pay for doing nothing.

I come now, said Mr. T., to my second grand objection to this measure—that it will interfere also with the judiciary department of our Government. Treason and perjury have been alleged against this individual; by what tribunal are these crimes cognizable? Certainly by the courts of law. The Constitution has guarantied to every citizen the right of a fair and impartial trial by his peers, a jury unbiassed of his countrymen—will this right be preserved to General Wilkinson after the denunciatory speeches which have been uttered on this floor are published? Will this right be preserved to him, when the whole continent has been searched not only for all that Burr could collect, but for a new enlistment, a host of witnesses against this man? Your committee of denunciation collects the testimony, the committee makes report of the whole to this House, and it is published. I say, will not this be prejudging the man, and condemning him, before he has been brought before your judicial tribunal, to which he is amenable if guilty of all that has been urged against him on this floor? After such a procedure would there be a possibility of this man's obtaining a fair trial, of his enjoying that right which is secured to him by the sacred provisions of the Constitution, and which even in a country far less jealous of the liberties of the citizens than ours ought to be, he would have secured to him?

I come now, said Mr. T., to my third objection to this measure—and which is nearly allied to the last—and that is, that in our military courts too you deprive this man of a fair trial. Every observation I have made in respect to the right of a fair trial by jury, I contend applies equally strong to the trials in our military courts. But this man is a soldier, he is Commander-in-Chief of your standing Army, therefore he is fair game—therefore we must hunt him down. Let us see what power the Constitution gives us in this respect—we have the power of disbanding the Army at any time by denying the vote of supplies—we are forbid to part with that power for a longer term than for two years, we can then disband the Army, in its climax of misconduct and disaffection, in spite of the Executive. Mr. T. asked was this the object at present? If it was, why did the gentlemen make the terms of their resolution wide enough to embrace the whole Army? But he gave them the credit due to their candor—they drove openly and above board at the man.

There was another power given to the Legislature of the United States by our Constitution—to pass laws for the regulation and government of the Army. Had this power been exercised? It had. Had the Legislature been restricted in the severity of the laws enacted for this body of men? They would see by looking over them. Mr. T. said he had looked over them. One hundred and one articles were contained in the statute book, every one of which (except about half a dozen) were distinct definitions of crimes. Of the statute book he wished to speak respectfully; the severity of this code might be necessary; but duty compelled him to speak of as he found it. It would seem as if the Legislature in penning this law had borrowed the pen of Draco, dipped in blood. Every step they took, from article to article, was marked with blood, with scourges, and with death. No less than sixteen definitions were there contained of crimes capital and punishable with loss of life. After having armed the courts, which, said Mr. T., are appointed to sit in judgment on these soldiers, (and remember that not only the standing Army, but the militia also are at times subject to these rules,) with the power of life and death, placed in their hands the scourge, the halter, and the musket, for lacerating and destroying the infractors of these articles, the Legislature, with all this severity, tempered the whole, with one divine, one beneficial principle. This box of Pandora contains hope—the hope of a fair, impartial, and unbiassed trial, by their comrades, by their peers. But this hope, by your present resolution, is proposed to be destroyed—as if the gloom around the arrested soldier was not sufficiently dark, you now are about to establish a precedent, which whenever used will shut out every gleam of light. Would it be surprising that men thus proscribed, marked out as the fit objects on which to pour out your vials of wrath, should in time become disaffected, should turn their arms against their country? Yes, by the course proposed you prejudge a citizen—you mark your victim. What despotism can be worse than this? The pious Parliament of England who brought Cromwell into power did this very thing. They were not content with the uncertainty of the proceedings of the criminal courts of that day—they appointed a committee, (as is proposed now, sir,) a court of high commissions, to take care that the courts of law and the military courts should let none go whom they had marked for destruction. How did this business end? The very pious and country-loving Parliament, who were so intent upon the public good as to break down and trample on every opposing impediment either of law, religion, or morality, and all for the public safety (the very motive we hear now urged,) were kicked out by Cromwell and that very army they had supported at one time and proscribed at another; and were sent, according to the language of that day, to seek the Lord elsewhere. And their degradation produced gratulations from every part of the

Commonwealth to the Protector, and confirmed him in as absolute power as the Emperor of the French by similar means has at this day acquired.

Why should I go back, said he, to the days of Cromwell. The effects of the mistake in this respect of a gallant and infatuated nation now exist. History need not record it for our instruction; the fatal error happened in our time. It would be too painful to travel from step to step, and detail the whole of the misfortunes of this gallant people. I will take, I think, the most interesting incident in the French Revolution. The point of time which decided that France was not to be a Republic. The Girondists who were the most enlightened, the most virtuous, perhaps the only real Republicans in France—denounced Marat. Marat and his friends made head against their opponents and in turn denounced them. Marat was destroyed by an enthusiast, but his party prevailed. Yes, from the rostrum in the conventional hall proceeded the poison, from the National Convention was administered the dose which annihilated all true Republicanism in that country—the system of prejudging the criminal before his trial. How was this denouncing system improved upon? At first indeed, there was kept up the show of a trial in the courts below, but the victim was nevertheless as certainly marked, or certainly doomed to destruction. But the orators in the Convention, having a long session, and finding nothing better to employ themselves in, multiplied the victims so fast, that to be possessed of an handsome house or estate, a beautiful wife, sister, or daughter, was crime sufficient to incur denunciation—the courts became so crowded with victims, that to expedite the business, instead of formal trials, the courts condemned *en masse:* ten twenty, or fifty, were delivered over to the public executioner, with only the ceremony of passing in review before the judge; a motion of his hand, or the waving of his *bonnet rouge*, was a sufficient signal for the executioners to lead the denounced to the guillotine.

We have a Constitution (said he,) we have laws enacted for the prevention and punishment of crimes. The rights of our citizens are, I hope, sacredly guarded by the provisions contained in them. Shall we then adopt this revolutionary measure?

All history shows—the experience of all ages ought to have impressed this important truth on our minds—that in religion anathemas, in politics denunciations, in popular assemblies, have led to the same slaughter-house—fell intolerance and bloody persecution. Shall we now throw aside our chart and compass, and venture in this wide, boisterous, and dangerous sea of expediency?

Look at the Constitution—search for this denunciatory power vested in this House. What is it? We have a right to impeach a civil officer for misconduct. What punishment can we demand for him when convicted? Dismissal from office, and disqualification from holding any future office of trust and profit. In nothing does the wisdom, the inspiration of the framers of this instrument more appear than in this restriction. They well knew the danger of introducing personal feelings and resentments, of party rage and fury in this body; of gathering here armed with the power of destroying one another.

I have said, on a former occasion, that this House had no power itself; its committee cannot have the power of sending for persons, papers, and records; it is no where directly given; it cannot be derived incidentally, in a case, the cognizance of which is not given to us by the Constitution. I then stated the cases where this incidental power is, *ex necessitate rei*, derived, viz: 1st. For collecting testimony whereon to form articles of impeachment. 2dly. Testimony may be thus collected in deciding on the expulsion of a member. 3d. Where an election is contested.

The gentlemen who support the resolution have been desired to show the power of the House for this purpose in this Constitution or in any law. They have not done so. They are obliged to resort to expediency, and that expediency, I have contended, will not hold them out. But, say they, the courts of inquiry and courts martial have no power of collecting testimony, and we must do it for them. Will the depositions taken before this House, or before your committee, be evidence in your courts? They will not. To sum up the whole, although I must acknowledge that the motives which actuated the mover and myself are, and must be the same; I declare I think he means as well as I, the good of his country; yet I would defy him to instance a more oppressive, a more unfair mode of procedure in the Spanish inquisition than the preliminary trial, for it is a trial of General Wilkinson, now carrying on, on this floor, and about to be prolonged by hanging it upon tenterhooks before a committee. Gracious God! what innocence can withstand this mode? He is charged with being a Spanish pensioner in 1796—again, on the river Sabine—a conspirator with Burr—a perjured man—a conspirator against the liberties of the citizens whom he arrested as traitors and coadjutors with Burr. These denunciations are enforced with eloquence, mixed and commixed, compounded and animadverted upon by as great talents as any in the nation. No notice is given to him to attend and make defence. Thus, with accumulated denunciations, but with but one document before us which can look like evidence, and that *ex parte*, this House is to be pressed into a vote which is to fix the stamp upon the character of the man, is to mark him as the victim of the courts below. If he were a demon I would not use him thus unfairly.

A motion to adjourn was negatived, 52 to 51.

Mr. Gardner moved that the subject be postponed till to-morrow, in order that the evidence of Mr. Clark might be printed for information. Negatived, ayes 42.

A motion to adjourn was now carried, ayes 66.

Tuesday, January 12.

Mr. Kirkpatrick presented a representation of the inhabitants of the county of Jefferson, in the State of New York, by a committee appointed at

a meeting of the said inhabitants, stating the dangers to which the petitioners will be exposed in case of incursions by hostile Indians, or troops from the British provinces of Canada; and praying that a military station may be established at some convenient place on the river St. Lawrence, and such other measures adopted for their protection and safety, as, in the wisdom of Congress, the urgency of the case may require.—Referred to the Secretary of War.

An engrossed bill to provide for the payment of certain expenses incurred in the impeachment of Samuel Chase was read the third time, and passed.

An engrossed bill for the relief of Oliver Evans was read the third time: Whereupon a motion was made to recommitt the bill to a Committee of the whole House; which was negatived. A motion was then made by Mr. STANFORD to commit to a select committee; which passed in the negative.

Resolved, That the said bill do pass, and that the title be, "An act for the relief of Oliver Evans."

Mr. EPPES, from the committee to whom were referred, on the twentieth of November, and seventh of December last, a memorial of sundry citizens of the first and second wards of the City of Washington, in the Territory of Columbia, and certain parts of a memorial of the first and second Chambers of the City Council of Washington, presented a bill to amend the act, entitled "An act to incorporate the inhabitants of Washington, in the District of Columbia;" which was read twice, and committed to a Committee of the Whole on Friday next.

GENERAL WILKINSON.

The House resumed the consideration of a resolution moved by Mr. ROWAN, for the appointment of a special committee to inquire into the conduct of Brigadier General Wilkinson, with power to send for persons and papers, and to compel their attendance and production, which was depending yesterday at the time of adjournment: Whereupon, Mr. ROWAN moved to amend the resolution, to read as follows:

Resolved, That a special committee be appointed to inquire into the conduct of Brigadier General Wilkinson, in relation to his having, at any time, while in the service of the United States, corruptly received money from the Government of Spain, or its agents; or in relation to his having, during the time aforesaid, been an accomplice, or in any way concerned with the agents of any Foreign Power, or with Aaron Burr, in a project to dismember these United States; and that the said committee have power to send for persons and papers, and to compel their attendance and production; and that they report the result of their inquiry to this House.

Mr. LOVE acknowledged that by the modification made by the gentleman of his resolution, he believed the House might have incidental jurisdiction of the subject; it was now possible the terms of the resolution might lead them to the exercise of some legitimate right under the Constitution. If foreign nations have been tampering with our officers, as the resolution suggests, and promoting a conspiracy against the Government, the inquiry on that subject might lead to some legislative regulation as to our foreign intercourse. Thus the House might incidentally have cognizance; and he conceived that the arguments of the gentleman from Virginia yesterday, relative to incidental jurisdiction, would leave in the modified shape of the resolution some ground of support. He admitted that the inquiry had progressed to that point which required of the House to go further with it, if they could, for the sake of justice to both parties. But, Mr. L. said, the resolution must still undergo considerable amendments, before it ought to receive the sanction of the House. He would propose one, which he hoped there would be no objection to; the object of it was to transmit immediately to the President of the United States, a transcript of the papers and information laid on the table. The propriety of doing so, said Mr. L., was obvious on two grounds; first it would enable the Government to lay before the tribunal now in session, which was engaged in the inquiry solicited by the Commander of the Army, the means of conducting that inquiry, with all the success which the proofs, if made in conformity to the information, and the papers might merit; and secondly, it will be the means of enabling the accused to defend himself against the charges which have been here publicly made against him, without any power on his part to assert their falsehood. It would seem, said Mr. L. that not only our laws, but the common rights of humanity, would enjoin on us the necessity of giving to the accused some power of reply.

Mr. L. then read the amendment, as follows:

"And that a fair copy of the information and papers laid on the Clerk's table, relative to the conduct of the said General James Wilkinson, in the matters in question, be immediately transmitted to the President of the United States."

Mr. ROWAN said that the papers now before the House might be disposed of in any manner that they should think fit; but he saw no necessity for connecting that disposal with the resolution now under consideration, which embraced the simple question, would the House appoint a committee of inquiry into the matter? Whatever information the House had before them they would know how to use. But, said Mr. R., gentlemen seem to think that the President has no information on this subject. Information such as that on the table, has been and is in possession of the Cabinet; and if the House adopt my resolution, they will call upon the Secretary of State for the information in his department, which it will be his duty to lay before the House. If this subject were about to burst forth for the first time to the view of the Executive, it would be proper to give him the information as it comes into our possession. But this is not the case; there is no necessity for sending it. Let the court of inquiry exercise their legitimate power of inquiry. This inquiry has been instituted by the President; let him superintend and manage it; but let us con-

duct our inquiry in our own way. Mr. R. said he could not see the propriety of the amendment of the gentleman from Virginia, or agree to it; and at all events, were it adopted, would call for a division of the question, taking it first on the amendment, as he wished to have a distinct and unencumbered vote on his own proposition.

Mr. Love said he knew not whether, as had been asserted, the same information was already before the Government, if it was he had no doubt also that there was enough of testimony to rebut it, from the circumstance of its not having been acted on; but of this he knew nothing, although he had understood that the purport of the charges on the Clerk's table, against General Wilkinson, had been laid before both the former Administrations. That the accused had been informed of them, and had requested from General Washington and Mr. Adams, successively, an inquiry into his conduct; that this inquiry was not assented to, because the charges were not credited or were refuted. This he learned from a document in possession of every member in the House, (the evidence in Burr's trial;) it was, as asserted by that document, said by the counsel on the part of the prosecution, that these requests were made by General Wilkinson, and refused; and to this proposition Mr. Martin, of counsel for Burr, assented, and said that a court-martial had been required by General Wilkinson.

Mr. W. Alston.—Can it be true that gentlemen who had made so much noise about an inquiry should want it to be stifled? Could it be true that they wished this evidence to be kept back? I did not believe it could be possible that any one would be found to object to the transmission of these papers to the Executive. What may be the effect of refusing to communicate them? An inquiry has been instituted into the conduct of this gentleman, and his conduct may be submitted to a court martial. This officer may be found capable of defending himself completely. The court martial of course will acquit him. Then what say gentlemen who have clamored in this manner? Why, that that this evidence was never communicated to the court. Would they not have a pretence on which to reiterate charges against this officer, although this evidence might have been before the court, but not from this source? I do not say this will, but it might be the case. Whether this proposition be included in this resolution, or made separate, is certainly very immaterial. Can gentlemen wish that a committee alone shall inquire? Do they wish the court not to possess such information as we possess? I must confess I cannot for my soul see any objection to the amendment.

Mr. Rowan.—The gentleman has mistaken me excessively. I am as willing as any one to give information to the President, if it were necessary. These papers are not embraced by my resolution at all. I am not opposed to the transmission of these papers to the Executive; but I do not believe that there is any anxiety there for this information, from what I have heard. The Cabinet has long been in possession of this information, and this officer has been officially named to the Executive as being concerned in the project. The truth of this assertion may be ascertained by searching the office of the Secretary of State. All I wish is that my proposition may not be encumbered by any other. As to the mode in which the committee shall proceed or the disposition which shall be made of the evidence when collected, or whether we shall then transmit it to the Executive or elsewhere, the House can then determine.

The amendment proposed is totally unconnected with the resolution under consideration. I am not very old in legislation, but I have seen that there is some art in it. There is such a thing as hugging a proposition to death, smothering it with kindness. I do not say that this is now the intention. I hope it is not. I should be willing, that it should be somewhat obscured by this amendment, but that the object of it can be as well attained by its introduction into a separate resolution. Whenever the proposition to transmit these papers shall come before us in its proper shape, I shall vote for it. I am willing that the Executive shall have every information relating to this important subject as early as possible; but I cannot see the necessity of connecting them. The House has not yet said that it will appoint a committee. First, try whether a committee will be appointed; and, when appointed, we may dispose of the papers before the House.

Mr. Eppes said it was not material to him whether the amendment was adopted or not. He thought that whatever difference of opinion might exist as to the form, there could be none as to the propriety of an inquiry into the conduct of General Wilkinson. The evidence exhibited to the House of Representatives had assumed a new and serious aspect. It was no longer the statement of a foreigner unknown to us on which we were called to act. A member of the House of Representatives has charged directly, on oath, the Commander-in-Chief of your Army with being a Spanish pensioner. A charge so specific, made by a credible witness, must be met by inquiry—by an inquiry which, whatever may be its result, will unite the public confidence. He thought that on every occasion where an inquiry was called for it ought to assume the form best calculated to do justice to the character of the individual accused and to the feelings of the nation. Will the report of a court of inquiry produce either of these desirable ends? Can the opinion of any three officers of your Army, however respectable, restore to General Wilkinson the confidence which it is essential for an officer of his rank to possess—more particularly essential at this interesting crisis in the affairs of the nation? Indeed, Mr. E. thought, after the observations which had been made on the floor of this House, a more general inquiry ought to be made; that the charge of corruption in the Army ought to be probed, and suspicion, if unfounded, removed by a fair and full investigation; that it was a piece of justice due to the officers of the Army—all of whom at present, whether meritorious or not, were implicated in

the charge made, as no names had been given. Mr. E. said it was certainly true that no power could be exercised by Congress not delegated by the Constitution. It was equally true that the power to punish a military officer could not be exercised by the House of Representatives. He considered the right of inquiring into charges, such as had been exhibited, as totally distinct from the right to punish. Punishment can only be inflicted in the form prescribed by the Constitution or laws. The object of the present inquiry was not to inflict punishment, but to obtain information subject to the future disposal of the Legislature. It was not in his opinion at present necessary to declare what would be the course pursued after the information was obtained; that must depend on the result of the inquiry. The information obtained may form the basis of any legislative provision within the delegated powers of Congress; or it may be transmitted to the department competent to try and punish. For punishing an offence against the military laws, a military tribunal was certainly the only one which could be resorted to. It ought however to be recollected that the charge against the Commander-in-Chief is for a species of corruption not punishable by any existing law.

Mr. E. said he did not however rise for the purpose of examining a subject fully discussed while he was absent from the House; he only rose for the purpose of correcting a statement made by the gentleman from Kentucky. That gentleman had objected to forwarding to the Executive the evidence exhibited against General Wilkinson, on the ground that it was already possessed by the Executive. He believed the gentleman in this to be totally misinformed. He had always understood that during the Administration of General Washington, a memorial had been forwarded to him by Mr. Marshall, of Kentucky, containing a detailed account of the old Spanish combination; that, under the Administration of Mr. Adams, additional information was forwarded to the Executive Department by Mr. Ellicott. He did not know how far the information transmitted to either of the preceding Administrations might criminate General Wilkinson; he was certain however, that no information had ever been received by the present Administration which went to charge General Wilkinson with being a pensioner of Spain.

Mr. FISK conceived, before they adopted this measure, that they ought carefully to inquire whether the power were given to them by the Constitution. It was proper that this House, however anxious for the public good which they might think could be otherwise promoted, should travel in the path laid out by the Constitution for their procedure. The Executive and other departments had certain powers delegated to them; it was not in the power of the House to say that it should or should not be so; the people had placed it there, and it was not for the House to say that it was or was not a judicious delegation of power. We, said he, are the ministers of the Constitution, and must be guided by it.

The resolution now under consideration did not originally present to his mind a subject of inquiry within the power of this House. It proposed an inquiry into the conduct of General Wilkinson in receiving a pension from the Spanish Government. It was now so modified as to go further, and inquire how he was concerned in the transaction of Aaron Burr. Whether he was or was not concerned, was not a subject of inquiry for the House. If General Wilkinson were concerned in it, the question arose whether he was within the power of the House; whether he was properly amenable to this House for his conduct, or to some other tribunal. The Constitution had expressly declared that the President, Vice President, and all other civil officer of the United States, should be removable from office on impeachment—all civil officers. Was General Wilkinson, a military commander, included in this description? Certainly not.

This House, with the other branch of the Legislature, was empowered by the Constitution to raise and support armies and to make all rules for their government and regulation. The Constitution then clearly contemplated specific powers as given to different branches of the Government, and it became Congress to make all laws necessary to carry into effect these powers, but no more. Congress then had power to make laws defining punishments, of all crimes committed against the United States, but the execution of those laws was intrusted to another power. They had erected a judicial tribunal, and to this tribunal had confided the execution of those laws. Every person charged with any offence was to be tried by a jury, excepting particular offenders against martial law. For all crimes other than military, the citizen was amenable to presentment by a grand jury. Unless he were a civil officer, this House had no power to act in this case; they had power to impeach civil officers, but no cognizance over military officers.

It might be well here to notice that the tenth article of the amendments to the Constitution expressly says, "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." A preceding article expressly guarantied to the citizen a trial on presentment or indictment by a grand jury, for any capital or otherwise infamous crime. If General Wilkinson had then been guilty of any capital or otherwise infamous crime, he was indictable by a grand jury, and amenable only to that or a military tribunal; and when this House assumed, as proposed, a course different from that prescribed by the Constitution, they no less violated that Constitution than General Wilkinson would in arresting a subaltern under military law and sending him to this House for trial.

Suppose a power given to a committee of this House to send for persons and papers, Mr. F. asked, was any person bound to obey the mandate of that committee? Would not their authority be treated with contempt? Would not a judge, if applied to for a writ of habeas corpus, be bound

to inquire whether this House had authority, and would he not be bound to release the person in custody of its officers? He certainly would.

In considering the power of the House, the passage of this resolution appeared to him to be absurd in another point of view. When the evidence was collected, what use could they make of it? Could a court receive evidence collected in this manner, where one party had no power to inquire, defend himself, or cross-examine witnesses? In no court could such evidence be admissable. For what purpose then did gentlemen wish to take this evidence? For no beneficial purpose that he could devise. If the House had cognizance over military officers, it would then indeed be proper that they should send for persons and papers, to enable them to inquire into the propriety of his impeachment.

But a gentleman from Virginia had yesterday called the attention of the House to the proceeding now pending in the other branch of the Legislature, being an inquiry into the conduct of one of its members; and had also told the House that the gentleman from Kentucky had as good a right to institute an inquiry into the conduct of General Wilkinson, with a view to his removal, as into the conduct of a member of this House with a view to his expulsion. Mr. F. said each House had the power to expel their own members for misconduct, or to punish them for disorderly behaviour; it would therefore be acting within their proper Constitutional power in making an inquiry into the conduct of one of their own members. Very different was their power as respected a military officer, into whose conduct they had no more right to institute an inquisition, than to arraign a grand jury for not having made proper presentments, or a petit jury for not having done its duty. The Constitution gave them not the power. The appointment and removal of all officers was vested in the President of the United States, by and with the advice and consent of the Senate. With the removal of this officer, then, this House could not interfere. Congress had by law instituted a tribunal for the trial of all persons charged with offences in the land and naval service, and a Supreme Court to try all treasons not committed in the Army or Navy. Our Constitution said that no person shall be tried twice for the same offence, or put into jeopardy of life or limb. If this House had, and exercised in this respect, a co-extensive power with the judiciary or military courts, would not a man be in danger of being twice jeopardized of his life? If the Supreme Court, said Mr. F. possess the power Constitutionally, and we at the same time exercise it, will he not be twice tried?

A gentleman from Virginia had yesterday told them that he had acquired knowledge not only of the guilt of General Wilkinson, but of the inferior officers of the Army, from no dubious source, and had felt himself bound to vote against this man as guilty of treason. Now, asked Mr. F., if these facts be true, and these circumstances were brought forward before the grand jury or inquest at Richmond, why was not this man charged of the offence before the proper tribunal? Why was it brought into this House, when the judicial courts were open to receive it? It would be easily seen how the man was jeopardized by this. Had he been presented by a grand jury, he would have had an opportunity of being confronted with his witnesses; but for representations on this floor a public accuser is not accountable elsewhere. If the House permit such an inquiry as this, said Mr. F., to the destruction of the character of an individual and a citizen, they will not only compromit their own dignity, but violate the Constitution. If the gentleman will point his inquiry directly at the President, and show plausible ground for it, I will vote for the inquiry, because in that case I conceive the Constitution gives us power. But while the resolution is pointed at a military officer, while it embraces subjects exclusively cognizable by a different tribunal, I think the adoption of the resolution would be a violation of that Constitution which I have sworn to support.

Mr. Elliot said that the remarks of his colleague were conclusive as to that part of the resolution which had been introduced by way of modification. Was it possible that this House was to erect itself into a grand inquest of the nation in cases of treason? It could not be. He was in favor of the most material part of the original inquiry, to wit, into the fact of General Wilkinson's having or not having received a pension from the Spanish Government. Certainly, if General Wilkinson had been guilty of receiving a Spanish pension, it was an act not cognizable by a military tribunal, or by any court of law in the United States; the House would therefore usurp no power delegated to another branch of the Government, by an inquiry into this subject. He only now rose to explain the reason why he should move for a division of the question on the proposition, so as to exclude that part this day added by the gentleman from Kentucky, relative to offences other than that of receiving a pension from Spain or her agents.

The Speaker said the motion could not be received, as a question was now pending on the amendment offered by the gentleman from Virginia (Mr. Love.)

Mr. Holland rose to express his approbation of the amendment last made, and his disapprobation of the original proposition of the gentleman from Kentucky. It would be recollected that a proposition substantially the same as this (alluding to the motion by Mr. Gardenier, for reference to a select committee, with power to send for persons and papers) had been rejected by a large majority a few days ago. The House was then governed by the opinion that they had not in this case a Constitutional power to send for persons and papers. What had since that time occurred which had changed the opinion of the House? It was true that they had received an affidavit from the Representative of Orleans Territory; but did that give them a Constitutional power which was not before believed to be possessed by the House? He feared the members of the House had become inflamed, and suffered their passions to supersede their reason; for nothing had certainly occurred

to change the Constitutional question. The Constitution of the United States expressly said that no person shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment by a grand jury, &c., nor be deprived of life, liberty, or property, without due process of law. Could it be contended by gentlemen who advocated this proposition, that persons should be sent for and compelled to attend, and that this procedure would be authorized by due process of law? Had it ever been contended that resolutions of one Department of this Government were the law of the land? Persons were to be sent for and compelled to attend. Suppose they resisted—they must be taken into custody. Were they not deprived of liberty the moment they were thus arrested? And was the authority under which an officer of the House would in such case act, the law of the land? Certainly not. Then the person compelled to come before this committee was not compelled by due process of law.

You might, said Mr. H., give the committee unlimited jurisdiction. Laws become compulsory in consequence of fines and penalties for disobedience or infraction; a law without a penalty is nugatory. The proposition now before you gives power to the committee to be appointed to send for persons. Will it not be necessary also to give them a discretionary power to lay fines and compel the attendance of persons for whom they may think proper to send? It may be necessary to go farther—to vest them with an additional power, thus: "Resolved, that they shall have full power to carry this into effect, &c." This proposition smells so strongly of the edict of an arbitrary Government, that it has absolutely astonished me. By adopting this resolution you give this committee power not only to inquire, but to execute your laws; at one single sweep you revolutionize our whole Constitutional power; all the principles of our Government are to be superseded by it. It is in vain to say that this is not so. Can any gentleman say that a compulsory process to bring persons from one part of the continent to another, operating on an individual, does not restrain his liberty without due process of law?

Where was the necessity for vesting in a committee of this House, if it were Constitutional, such extraordinary powers? Had the House been shown by any one gentleman who had advocated the proposition, that the present authority of the country was not competent to the ends professed to be intended? A gentleman had stated that in case this officer was a Spanish pensioner, he could not be tried by a court martial. Was it possible that this was not the case? Had not a court martial power to try such a crime as this? Mr. H. thought they had. Courts martial had power in certain cases to inflict, on conviction, a capital punishment. And with so extensive power was it possible that they had not cognizance of a case of this nature? Certainly they had. If an officer of the Army was found to be a pensioner of the enemy, would not a court martial decide that he was unworthy of his office? Did not the Constitution say that no person receiving a pension from any foreign Prince or Power shall hold any office under the United States? Mr. H. was willing to say that every citizen, officer or not, was liable to be tried by jury; and the powers of the judicial courts were ample; where then was the necessity for giving these powers, if it could be done agreeably to the Constitution, to a committee of this House? Nothing but revolutionary principles could justify it—nothing but a firm persuasion that the constituted authorities of the country were not competent.

If you adopt this resolution, said Mr. H., you acknowledge the doctrine that the Republic wants energy; that the greatest offenders cannot be tried; and further, this House takes upon itself the burden of the trial. Gentlemen say that this is not a trial; it is only an inquiry by the grand inquest of the nation. Inquiry is the first step to bring a criminal to justice. Where have gentlemen shown that this House has any power to prosecute a criminal? They have no such power? This is in fact to be a trial. It is worse; it is the trial of a person in his absence—a trial without an opportunity of confronting his accusers, or hearing his witnesses and knowing his accusers. This is the kind of trial which this committee is to be authorized to institute.

When this committee send for persons, and they refuse to attend, (and Mr. H. supposed every man who wished to adhere to the legitimate authority will refuse to obey the process,) what will be the consequence? You must protect your officer, said he; must give him force. You cannot have the force of the judiciary department, nor of the Army or militia, for they can only be called upon to execute Constitutional laws. Suppose your officer was insulted, as I take it he would be, where is his remedy? Suppose he were to be sued for false imprisonment, for no freeman would suffer himself to be taken into custody contrary to the laws of the land, and not advert to his Constitutional remedy? Will it be said that your officer is not guilty of false imprisonment because he acted under the laws of the land? Would a judge say that this resolution is a law of the land? Suppose persons refuse to give testimony, have you the power to punish or fine them? Whence do you derive such a power?

Designing men, said he, will rally round this committee as round a standard of corruption and intrigue; for there they may swear without fear of a prosecution for perjury. This inquisitorial procedure will be a mockery of all trial; it will be a farce; the very focus of injustice and intrigue. And who are the persons who are to constitute the committee to conduct this trial? Persons who have already declared their conviction of the guilt of the accused, having committed themselves by an expression of their opinion on the case. So extremely cautious are the laws that in civil cases, where the parties are called before a court, that persons interested are not permitted to give evidence or to try them. But here the very persons who have condemned the person implicated, are to be authorized to take down the testimony—of whom? Persons enemies to law and regardless

of Government. It would form a singular spectacle, if while this tribunal is examining and taking down testimony, trying a person in his absence, the Senate (by committee doing the same thing) could examine the case as another inquest, being another court having at least the same cognizance as this House; at the same time this person may be under trial before a judicial or military court. All this may happen, and were the principle now contended for to succeed, will happen; there will be nothing to prevent it. Such a doctrine as this is surely not consistent with the principles of the Constitution. Every person must have the right of knowing and confronting his accusers, and ought to take his trial before unbiassed judges. Very different is this tribunal intended to be, and on very different principles. Hunt down an officer in this way, and who will be an officer? Because *ex parte* testimony exists, I hope we shall not permit ourselves to be so much agitated by it as to take the power of trying this person out of the hands of the constituted authority of the nation.

Mr. Sloan introduced his remarks by observing, that if he could reconcile it with his duty as a member of this House, and as one who considered himself as a watchman to guard, as far as his weak abilities would permit, the rights and liberties of his constituents, with only giving a silent negative to what he considered the most dangerous and most alarming innovation that had ever been attempted, he should not have detained the House one moment to express what he was about to say. But he felt alarmed, and he considered it his duty to express that alarm in the manner in which the God of nature had enabled him to do it. What did he see and hear? Propositions to throw into confusion, and break down the barriers of our rights and liberties. He had been taught, from his infancy, from the time in which he was susceptible of instruction, to consider that the excellency of Government consisted in the various branches of that Government acting each within its proper sphere—that the Legislative department should confine itself completely to making laws for the good government of the United States; that, on the other hand, the Executive department should confine itself within its sphere, and faithfully execute those laws committed to its trust. How dangerous and alarming, then, must it be to him, brought up in these principles, to hear and see the highest Legislature of the Union—the House of Representatives of the United States—to see, in that august body, a resolution brought forward, the tendency whereof was absolutely to invade the rights of the Executive department! Had they not laws already severe enough? If not, said he, let us make them more strict. If the judges have not done their duty, let them be impeached. This would be the proper course.

But, it was strange, passing strange, to see this matter now brought up, when there is a tribunal now sitting with power of inquiry to pave the way to another court, vested with the power of using the musket or halter to take away the life of the accused, if found guilty. If he were not amenable to a military tribunal, was not the civil department open? Permit me, said Mr. S., to call the attention of the House to what passed at the last session. How loud were the exclamations against this very officer for what was then called a breach of civil law, in arresting certain traitors! What was the cry then raised against this officer? That we were not safe. Recollect the language of a member, addressing the Speaker: "Your honor is not safe in your Chair." Let us contrast this with present circumstances. What were the reasons for this officer's conduct? That he considered his country in danger; that he saw a host of traitors ready to deluge his country in blood. He, then, did indeed usurp the civil authority, but he did it like an honest man—like the saviour of his country. Does any such exigency as that was, now exist? Is the country so much in danger as to justify the Legislature of the Union in invading the Executive department? I cannot conceive it.

Before he sat down, Mr. S. said, as there had been a great deal (to make use of a metaphor) of dirt cast, he would ask, whether it attached to any one? He would not be understood as giving his opinion whether Wilkinson were innocent or guilty. It was not his province so to do; but it was his province to give his opinion on what appeared. It was a sound maxim in law, that what does not appear, is of no weight. Whatever had appeared against this officer, did him honor. What he was charged with could have no weight, for General W. had no opportunity of being confronted with his witnesses, of cross-examining them, or of disproving the charges. I have no objection, said Mr. S., that this evidence shall be handed to the Executive department. What has been made to appear against him? That he arrested traitors. And who doubts that, if he had not done so, he would not have acted as the saviour of his country? Is it because this man assisted in the capture of Burgoyne, which was the first step toward securing our existence as a nation, and because he has now arrested an infernal band—a host of traitors—is it for these things that he is now charged? I do not say that it is. But, if it is, I hope to God that the malignant darts hurled at him, may recoil upon those who cast them. If he is innocent, I hope his sun will set in glory, like the great luminary, after a tempestuous day.

The member who introduced this resolution, observed it would answer one purpose. It has answered two. God forbid that it should answer a third, that of committing the Legislature of the Union, by doing a thing entirely unconstitutional and out of its province. I am willing to give my vote against anything farther than to hand the evidence to the proper tribunal.

Mr. M. Williams said, he would state a few reasons why he should vote for the resolution now before the House. It will be recollected, he said, that, some days ago, when a motion was made to refer the resolution to a select committee, with power to collect testimony and summon witnesses, it was rejected by a large majority. I

was one who voted against a reference; and it has been mentioned by gentlemen, in the course of argument, that those who voted in the majority then, should now vote against the present motion, or they would act inconsistently. But I think very differently from those gentlemen, and shall vote for the resolution. At that time the House was not in possession of any papers nor the deposition given by the Delegate from the Territory of Orleans; but, as the House is now possessed of the evidence, the question is very different, and I think ought to be adopted.

We have been repeatedly told that this House has no right to make the inquiry; that the Constitution has not given any such power. The Constitutional objection, I think, is not a good one. If this House was about to assume the right to try General Wilkinson, the objection would be a solid one. But, what is the object of this inquiry? Not to try General Wilkinson; it is to procure testimony, and to give information to the proper authority. It has been admitted by all the gentlemen who have opposed the inquiry, that it will be proper for this House to transmit to the President all the information they possess relative to the conduct of General Wilkinson. If, therefore, that is proper, and not a violation of the Constitution, most undoubtedly this House has the right to procure further testimony. Why have they received the deposition of the gentleman from Orleans Territory? Can there be any difference in the principle? I think not. What will be the power of the committee? Only to collect testimony and to report to the House; and what can be a greater security to the preservation of our present form of Government, than the members of this body, convened from every part of the Union, that they should watch with a vigilant eye over the conduct of persons high in office?

It has been often repeated, by gentlemen who are opposed to the resolution, that, by passing it, we shall cast a censure on the conduct of the Executive. Surely not. What are the circumstances? Did not the gentleman from Virginia inform us that the papers were put in his possession the morning that he brought forward the resolution? Can any censure, then, be attributed to the President? No. I have the utmost confidence in the President; the people of the United States have the greatest confidence in him. Another reason, stated by some gentlemen, why the House should not act, is, that it is the President's duty to make the inquiry, and that he has full power to do so. The only power the President has is derived by the act of Congress establishing rules and articles for the government of the Army of the United States. But I think the provisions of that act are inefficient. The President, who is Commander-in-Chief of the Army, can order a court of inquiry, which shall have the same power to summon witnesses as a court martial, and there is no provision by which that court can compel the attendance of witnesses out of the Army. In addition to this, there is another reason why I think this court is insufficient: The officers who are under the commanding officer are to compose the court, and may be influenced to acquit him; or, on the other hand, may convict the person charged, and by that means be themselves promoted. We have been told that, if the resolution be adopted, you will destroy the inquiry. Will the diligence of this House to collect testimony have anything to do with the court of inquiry? It, perhaps, may have a good effect and make them more strict.

Another objection to this resolution is, that the person charged may be prosecuted in a court of justice. Admitting he can, is that any solid objection why the resolution should not pass? In a case like this, who will undertake the prosecution? Is it not well known that the proceedings in our courts are very tedious and expensive, and that the juries of our country require strong and pointed evidence before they will convict any person? Besides, would any man contend that the same evidence is necessary to a charge like this as would be required to convict a person charged with treason or felony? I presume not.

By the Constitution, Congress have the right to raise and support armies, and to make rules for the government of the same. Suppose it was necessary now, and we know not how soon it may be, to increase our military force; and suppose we had some proof that our commander was a traitor to his country, or intended to subvert the Government, and this House knew where they could procure the testimony to show this corruption. Would any person, under those circumstances, contend we had no right to use the means to collect the evidence; and would this House pass a law to raise an army before they made the inquiry? Certainly not. Can it be supposed they ought to be silent? Truth never ought to be stifled. This inquiry is due to the individual and to the nation. In a Government like this the conduct of every person holding a high office should always be subject to investigation. And the conduct of none in the Government is more interesting to the people than the Commander of the Army, whose character should be unsuspected as much as the President himself; and I am sure that this House will not violate the Constitution, nor infringe on the power of any other department of our Government, by exercising the right of making this inquiry. I therefore hope the resolution will be adopted.

Mr. UPHAM said, he had attended to the debate on the resolution on the table, with attention, to discover whether he could Constitutionally agree to pass the resolution. His feelings would impel him to vote for the resolution, but his judgment would restrain him. He was desirous that General W., or any other man, charged with whatever crime, should be tried for it—but constitutionally. He would here observe, that when they were told of persons high in office being pensioned by a foreign Power, and concerned in conspiracies to dismember the Union, they were liable to be carried away by their zeal for ascertaining the fact. They should, therefore, proceed with caution and deliberation. He considered this

question, as it respected the power of the House in the same light as if General W. were a subaltern officer instead of Commander-in-Chief. If the House had not power to investigate the conduct of a subaltern, he could not see whence they derived their power over a Brigadier General. He was himself fully impressed with the testimony which had been produced, and was in favor of an investigation into the conduct of this person, that, if guilty, he might be removed. But, he could not, for this reason alone, agree to this resolution. He went upon the ground that the Legislature had no more power, by implication, than the Executive, or any other department of the Government; and, when gentlemen talked about the House of Representatives being the guardians of the public weal, he could not understand distinctly what was meant. If the authority for doing this act were not shown in the Constitution, and it could not be, he did not know whence they derived their authority. Whatever authority was not expressly granted by the Constitution, remained with the people; and no more authority was granted by implication to the Legislature than to the Executive or Judiciary. He believed it was not contended that the power to pass this resolution was given expressly by the Constitution. Was it, then, given by implication? The power of removal for misconduct, or without alleged guilt, was given to the Executive alone. Had the House the power to try an officer for treason, or other crimes? An authority to do this was expressly given to the Judiciary department. What was the object of the resolution? It must go either to removal from office, or trial for treason or misdemeanor. The power to accomplish both these objects is expressly vested in two other departments of the Government, and certainly not in the House of Representatives. It would not be contended, he presumed, that the House, by implication, possessed the power to do that which was expressly reposed in another department of the Government.

While up, he would state what he did believe—that, if it were stated to the House that General Wilkinson had received a pension from Spain, and that the President, under a knowledge of this fact, had refused to remove General W. from office, for the purpose of examining whether it would be proper to impeach the Executive, a committee must be appointed to call for persons and papers; because there the end proposed was within the power of the House, and they were clothed with authority to do all that was necessary to accomplish the duties imposed upon or delegated to them by the Constitution. So if a gentleman proposed the impeachment of a judge, and moved the appointment of a committee to send for persons and papers, it could be done, because it also was within their Constitutional power. So, also, the House had power to disband the Army. If the question proposed by the resolution was the collection of proof of corruption in the Army, with a view to disbanding it, it would be in the power of the House, by implication, to erect a committee of inquiry. The object of this resolution, however, must be to collect facts, by which to inquire into the individual guilt or innocence of General Wilkinson, and with this the House of Representatives had nothing to do. Suppose they collected evidence, what was to be done with it? They might send it to the proper department; but could it be received as evidence before a judicial court? Upon the same principle as this now contended for, the House might, on being informed of a murder committed in the neighborhood, appoint a committee with compulsory power to inquire into the transaction. Suppose a committee appointed agreeably to the resolution, and a witness summoned by that committee were to refuse to attend and testify, were to treat their process with contempt, and the committee were to commit this person. If application were made for a writ of habeas corpus, would not a court dismiss him by such writ, because the Legislature had assumed the power to act on a subject not within their province?

He had always considered that the very existence of our Government depended on keeping the several departments separate, and taking care that one should not encroach upon another. Gentlemen had said that this was an extreme case, and that, as guardians of the public weal, they ought to pursue this course. Mr. U. thought this principle was a dangerous one. It was as important that this House should not encroach on the judiciary, as that the judiciary should not encroach upon other departments. One thing he observed, that when gentlemen of the first abilities in the House had been called upon to show authority for this resolution, they had failed to show any. He had stated thus much, because the yeas and nays had been called, and because he could not reconcile the giving his affirmative to this resolution with his oath to support the Constitution.

Mr. Rowan said, to avoid a delay of time, he would accept the amendment as part of his resolution, though he should move for a division of the question, that they might be decided on separately. Gentlemen who opposed his resolution had gone upon the principle, that, by passing it, this House would transcend its power, and upon that had predicated all their objections. It was upon this ground that he advocated this resolution. He contended that this House had the power; the very first clause of the powers delegated seemed to vest this in Congress. It must be allowed, that to have a Commander-in-Chief friendly to our enemies, was against the common weal: "Congress shall have power (says the Constitution) to lay and collect taxes, &c., and provide for the common welfare and defence of the United States," &c. Would it not be providing for the general welfare to remove an officer thus situated? Suppose a Commander-in-Chief, said Mr. R., leagued secretly with our enemies, could we, under these circumstances, think of carrying on war? We certainly should not. What could we do in such a case? Disband the Army we could not when menaced by our adversary, for that would be throwing ourselves directly into

the enemy's hands. Would you withdraw the supplies? The same consequence would result. What, then, could be done? Request the President to remove him? It will then be said, as it is now, that the House is encroaching on Executive prerogative. The House certainly possessed power to request the removal of the Commander-in-Chief under the general provision of the Constitution, and, consequently, possessed the power to collect evidence for ascertaining the guilt or innocence of that officer.

Gentlemen wondered what could be the object of an inquiry. Mr. R. said he would tell them. He was unwilling to make a request without strong grounds on which to make it. The power to make the request seemed to be conceded; the power of collecting evidence on which to found it followed of course. He would then receive such information as would justify the House in impeaching—not Wilkinson, but the President, if he should refuse to remove that officer.

He contended for the power of the House, because he could not see how the common defence could be maintained, and the general welfare promoted without it. In vain had the Convention given to Congress the power of raising and supporting armies and providing for the common weal, except it had also given the power to inquire into the conduct of the Commander-in-Chief—not, as had been said by the gentleman who had just sat down, to inquire into the conduct of a subaltern officer, because his misconduct would not so imminently endanger the public weal. It was under this provision of the Constitution that the Commander-in-Chief became subject to inquiry as to his conduct and disposition. The President was Commander-in-Chief in time of war. Would it be said that any conduct of his in that character which would justly expose him to the animadversion of the nation, could not be inquired into? And although his misconduct in the character of a military chief could not be the subject of impeachment, yet this House, the two characters of President and Commander-in-Chief being combined, would and ought, in promotion of the common weal, to impeach and remove the President, to get clear of the commander; a destitution of this power might be fatal to the nation. Its exercise was not only deducible from the genius and texture of our Government, but resulted from necessity.

My mind, Mr. R. said, revolts at the idea of our not having power to inquire into the conduct of the Commander-in-Chief who conducts our armies. It seems to me, that on the principle of self-preservation, we possess this power; the Government is in fact annihilated if we do not possess it. Suppose it was declared to you that a person, the Commander-in-Chief, or Colonel Burr, for instance, was to turn Congress out of doors; suppose that the President had a secret understanding and was leagued with him, and that for the better covering of their designs, Colonel Burr had threatened to tie him neck and heels and throw him into the Potomac; suppose at this time it should be necessary to raise an army of fifty thousand men, and we made a request to the President, in consequence of this information, to remove this commander. He may not choose to obey the request; he may refuse to remove him. What power have we to compel him? Should we prosecute him for the refusal? No. You ought to lay before him such evidence as would compel him to remove this officer; and if he then refuses, you ought to remove him. The very opposition to this power on Constitutional grounds furnishes arguments in its favor. It was lodged in this House by reasoning, by implication, and by expression.

Mr. R. did not wish to try General Wilkinson; he had no desire to try him; far other were his purposes. He viewed the critical situation of the country at present—a man at the head of our army, against whom, to say the least of it, there was a very strong suspicion. What was to be done? Look at the proceedings of the session before this, when the President had pronounced General Wilkinson a patriot, and a man of honor. Look at the papers now on your table; by these he is pronounced an enemy, as being concerned in a project for dismembering the Government, and as a foreign pensioner. It was not to be expected that the President would remove General Wilkinson except good grounds were shown for that removal. How could they come at them? It was contended by the opponents of this measure that they could not come at them. It followed, that if they had no power to collect them, and the President retained his good opinion of this officer, that the armies of the United States must continue to be commanded by General Wilkinson. The President, no doubt, would remove him whenever they laid before him testimony to authorize this removal. It was to obtain this testimony, and not to punish General Wilkinson, that Mr. R. wished this inquiry. When this was had, if military or civil courts chose to prosecute this person, it was very well; but his views went beyond this, he would not otherwise trouble the House with so unimportant a subject. He wished the nation either to be satisfied of the innocence of this man, or the nation and the President to be convinced of his guilt, and that the nation might have a commander in whom they could confide. How then would an inquiry infringe on any Constitutional provision? It was not a trial that was now asked. It had been said by some gentlemen that this was a trial, that this person would be tried again by a court, and the House had been told that the Constitution declared no person should be twice jeopardized for the same offence. If this were actually a trial that was proposed, the argument would hold. But, unfortunately, the argument admitted that a prosecution might be instituted for a crime of this kind against a civil officer, who after impeachment and removal falls into the hands of a court of justice; and any man would be laughed at who would say in a court of justice that a prosecution should not be instituted because Congress had inquired into the subject. These arguments only went to prove that what a man wishes he can easily find a reason for: those

who were opposed to an inquiry into the conduct of this man, could find reasons against it.

As to the charge against those who advocated the resolution, that they slandered or calumnated, it was unjust and unfair. Mr. R. said he knew not General Wilkinson; he should rejoice that he should come out clear of even suspicion; but he had no idea that delicacy should stand as a barrier between the nation and its true interests, or that delicacy should screen this man from a timely inquiry in a time of danger. If they were to consult delicacy, or if the object of this committee was to shut out light, as had been said, then indeed a majority of the House would reject the proposition. He could not, however, but admire the sapience of the position that the appointment of a committee to inquire was the exclusion of an inquiry. A tribunal of three officers was said to be competent, and delicacy was called upon to prevent the expression of a doubt of their power or competence; while the same gentleman told them that an inquiry by a Committee of the House appointed by the Speaker was to be in the dark! He was not surprised that gentlemen who were so greatly in the habit of confidence, should wish that a military inquiry should have preference to an inquiry of this kind; the delicacy of courts, thank God, had not so much influence over him as to induce him to resign the rusticity of the republican to motives of delicacy towards a military tribunal. If gentlemen could reconcile with that doctrine their cry against encroachment, let them do it—he should be pleased to hear them.

But, he contended that the Executive Department was not possessed of all power, and that this power rested with this House. If it were not in this House, where did it rest? Point out the clause of the Constitution which gave the President this power. If not there to be found, whence did he derive it? From this House? From a Constitutional delegation of it to the Executive? Had the House so far divested itself of power as to leave itself incompetent to this inquiry? Their portion of power was indeed scant, if they had not left themselves a remnant for national purposes, and that remnant he hoped they would not from false delicacy transfer to the Executive or to a military tribunal, if indeed an inquiry was intended to be made.

As he had been asked for authority, he would in turn ask gentlemen to show or point out the power vested in this triune court; the law of Congress or the clause of the Constitution which gave to this tribunal exclusively the power, and took it from Congress? It was not arguing fairly, when they called upon him to show an express power vested by the Constitution in this House, without showing on their part the authority of the Executive to exercise it exclusively. They were told that General Wilkinson was a military man, and ought to be tried according to the etiquette of military courts, and not upon the plain ground that members of Congress could pursue. If this was the authority which gentlemen would produce, and they were willing thus to surrender their own rights, let them do so; but he was not prepared to go with them.

Mr. R. thought it essential to the common weal that they should request the President to remove General Wilkinson; and, if after this request, he should still continue in command, that they should try, not General Wilkinson, but the President of the United States. He did not, nor would he say that it would be necessary to do it in this case: No President could withstand the voice of the nation so supported. He did not mean to say by this that the President would require any great exertion of their authority to induce him to do his duty, though he was not so fond of expressing confidence in the Executive as some gentlemen were. He had confidence in the Executive, but his confidence was seasoned with vigilance—a vigilance predicated upon the frailty, the fallibility, and the corruption of human nature. It was in perfect consonance with his confidence not to rely implicitly upon a single individual; and, therefore, when the common weal required an inquiry, he should not be deterred from it by the professions of confidence in the Executive, or by that delicacy and abhorrence of slander displayed by a gentleman who talked of a clamor against those who were honestly endeavoring to discharge their duty to the best of their ability. He, as one, did not mean in this or any other case, to effect any purpose by "clamor;" he hoped always to be able to show cause for any proposition which he should make, with a due regard to the feelings of those who might entertain a different opinion.

If Congress could not make this inquiry, and no power could be shown in the Executive to make it exclusively, what resulted? That no inquiry could be had? Suppose the Executive did not choose to make an inquiry (though in this case it seemed he had ordered one, after this House had taken it up) what was to be done? Was there to be no inquiry? After testimony had been produced, and that supported by circumstances almost as strong as proofs from holy writ, that the Commander-in-chief was a pensioner of Spain and had plotted the dismemberment of the Union, nothing could be done. This would be a dissolution of national power. All the arguments opposed to this power in the House, went to the very vitals of the Union; they went to vest an individual with a power extremely dangerous and against which the people were more jealous than upon any other subject. And he confessed he was surprised that gentlemen who wished to be thought exclusively the advocates of the people's rights, should argue that the Executive in preference to Congress should possess a power so important to the public weal, and this doctrine supported by no better arguments than charges of slander, want of confidence, and indelicacy, against their opponents in opinion.

But it was urged by one gentleman that if it were stated in this resolution that the object was to impeach the Executive, he would vote for it, because it would then be within the power of the House. By fair implication this object was expressed as strongly as if specifically stated. If

the resolution would have the support of the gentleman on that ground, why not give it his support when it was intended to effect that object which must be resorted to if the Executive refused to remove this officer? For if a refusal was made, it followed that all this was preparatory to an impeachment. Instead of making a request to inquire, the House had wisely prepared to collect information, in order to call the Executive to account on a refusal to remove this officer, if the information, when collected, made his removal necessary. As he conceived that gentlemen would impeach the President, if it should become necessary, they should vote for this resolution, as it was the first step to impeach him, if the national weal were not consulted short of such a resort. Mr. R. beseeched gentlemen of the House to consider the danger which might result from a decision contrary to that which he supported. He might be mistaken in his ideas; and, if he was so, he hoped he should be voted down. For himself, he voted with no man or set of men; he felt gratified when his opinion met the sanction of the majority, but should never abandon a subject because there was a prospect of his being in the minority.

It had been opposed, as a great argument to this measure, that they were assailing a character without giving him an opportunity to defend himself. Into the conduct of what officer had they ever inquired without doing it in this manner? If they involved the character of a man it was done with a view to the public good, and must be submitted to; they could not inquire into the conduct of a man without implicating his character. Would any gentleman say that the door should be barred to inquiry for the public good, because it might implicate or even sacrifice an individual character? It was better to sacrifice an individual than that the nation should fall. If General Wilkinson was innocent, and he sincerely hoped he might be so found, though, acquainted as he was with the character of the deponent, he could not but have his fears; if General Wilkinson should be innocent, his character would shine with additional lustre; no sacrifice of character would have taken place, and the nation would go on to perform its usual functions. If, on the contrary, the statement of the gentleman from Orleans should be correct, what would be their situation? They would go on in this way, out of delicacy, with a traitor at the head of our Army. He was shocked at the arguments which had been used, which had led to this conclusion. As to a person being put twice in jeopardy, contrary to the Constitution, it was in vain to tell the nation that a court of justice could make this inquiry. A trial might be carried on in court; a jury might be packed, or wrought upon by means of the press. Every one had seen books written, and the presses teeming in vindication of this man, and the public papers made the vehicle of his defence. When energies of this kind were employed, who could say what might be the result? If a jury should find him guilty, fine and imprisonment. And, even in this case, it remained a question whether the Executive would choose to remove him or not: the crime might not carry with it such a conviction as to compel him to remove him, and what would be the consequence? The nation would remain in this situation, said Mr. R., because we have not the power to collect evidence on which to make a request, which the President could not disobey, to remove that officer.

The arguments which had been used, much as Mr. R. might be charged with having particular views, tended to show that there were other gentlemen in the House yet more acquainted with the business than he was. The gentleman from North Carolina had alluded to papers which General Wilkinson had, and which he could not show. Mr. R. did not know what papers the gentleman alluded to, but he did not distrust the nation or the House; if the House instituted an inquiry, this officer would have justice. The gentleman seemed to know that he had papers which would avail him much; they would not be lost; the nation would read them, and the committee of the House would read them, so as to do him complete justice. He could only say, before he quitted that gentleman, that he was infinitely beyond him, when he gave the House to understand that he was prepared to prefer military to civil institutions—when he thought it safer that this power should rest with three military officers than with the grand inquest of the nation, for he must yet use this word, which had been so much carped at. He said, there was more safety, as much justice, and more propriety, in an inquiry by this inquest, than by three subaltern officers of the Commander-in-Chief.

The gentleman from North Carolina was followed by the gentleman from Pennsylvania, (Mr. SMILIE,) whose arguments were almost similar to these, except that he had not charged the advocates of the inquiry with an intention to slander, but equally inculcated the necessity of extreme delicacy toward General Wilkinson. Mr. R. execrated the delicacy which preferred the feelings of individuals to the national concern; he did not understand such delicacy, and hoped he never should.

The gentleman from South Carolina (Mr. TAYLOR) had expressed his fears that they were about to take away the trial by jury. Mr. R. was surprised at the confusion of ideas by which the gentleman's understanding (generally clear and luminous) was bewildered; at one time speaking of the refusal of trial by his peers, and again, that the life and liberty of the officer were in jeopardy. In the first place, this was not a trial; it was an inquiry for the general good, of which General W. happened to be an object, but of no more importance than any other thing. No man should stand in the way of an inquiry by the people, when it was legitimate; and General W. was but a subordinate thing when compared with the great object of inquiry. If ever, after this inquiry shall have been made by the House, or, if before, a court shall choose to take cognizance of General Wilkinson, then his trial by his

peers would be attended to, and he would not be deprived, as had been depicted in such glowing colors, of the Constitutional right of every citizen. He was not less surprised at another reason which had been opposed to this inquiry—that the Executive was going on with an inquiry. If General W. was going on with a process which would terminate in the prostration of our civil liberty, said Mr. R., we should be told we must not interfere, because the Executive was to see it—he was managing it. If the Executive has instituted an inquiry, let him conduct it; we do not wish to interfere with him; we are carrying on an inquiry for a certain object—he for the same, or some other—it might be for some particular act, as it related to subalterns, or for unmilitary conduct. To subject him to such an inquiry as that ordered by the President, he must have done a thing which the rules and regulations of the Army did not admit. General W. had requested an inquiry, and he might direct it to what object he pleased. Mr. R. was for making a sweeping inquiry as to the whole of this person's conduct since he had been an officer of the United States. He felt the more inclined to this, because in drawing the net, they might catch smaller fish. He had good grounds to believe that, in this disclosure, matters would come out of importance to the nation. If another argument, by the gentleman from South Carolina, was to have influence, they might stop at the threshold, and all the argument might cease; that they should not do good, because the extreme of good was evil! France went into an inquiry. She went too far, and brought her guillotine into play; ergo, said the gentlemen, it is improper to inquire! Well, then, said Mr. R., let us stop. Let Power and Burr carry on their dismembering plan, because, if we go into an inquiry, we might think of the guillotine; we might, possibly, think of taking off the head of the man who would be daring enough to plot the dismemberment of the Union. I am for conducting the inquiry freely and temperately. I have no idea of throwing the weight of the House of Representatives against General Wilkinson; and I lament that there is cause, or that there seems to be cause for suspicion on the part of so high an officer.

As to the guillotine, and the horrors of the French Revolution, the way to avoid them was to rally round the Constitution, and not to break or bruise it, or render caprice the sole rule of action. Instead of boasting of confidence, said Mr. R., let this House, the Judiciary, the Executive, and every other department, rest within its own sphere, do its duty, and look to the legitimate source of approbation, and let us not poison the minds of the people by exhausting the whole stores of eulogium on any man or men when there was no occasion for it. If they were to speak less of confidence, and endeavor more to deserve it, by pursuing a correct and independent course each, according not to Executive, but his own views, and leave the people (the only legitimate tribunal upon such subjects) to withhold or express their approbation as well of the Executive as the Legislative functionaries, then there would be nothing to fear from a guillotine. If the Executive had done his duty, he would have in his favor the verdict of the people in his re-election—a sanction worth more than a thousand fulsome and factious addresses—he would neither need nor be gratified with that ascription of confidence of which so many are now so profuse.

But, said Mr. R., his astonishment continued through the whole investigation on this subject. The gentleman from New Jersey, (Mr. Sloan,) while he contended that the prostration of the Constitution at Orleans was grateful and meritorious, was extremely curious in thus taking so much care of the Constitution now. The gentleman had told them that the Constitution had not said that this House should inquire into the conduct of the Commander-in-Chief, and because it had not, they should take care of it; thus particularly expressing an approbation of conduct in General W., which the nation could not have empowered him to pursue; carefully guarding the Constitution now, and yet profuse in his approbation of this man for violating the Constitution unnecessarily, and sending persons from place to place without the process expressly required by the Constitution. This was the way that prejudice worked in favor of or against the matter in discussion.

Mr. R. begged that gentlemen would consider; that they would pause, and think, before they went too great a length in denying their own power.

A great many minor objections had been made to the operations of this committee, when instituted—all valid, if the House had not the power to appoint a committee. If they could not appoint a committee, they could not compel attendance on that committee. But, if the appointing a committee of inquiry was within their Constitutional power, (and he hoped it would be so decided,) they would find ways and means to compel attendance. Who would dare to prevent it? When the nation moved upon deliberation, and within the circle of Constitutional powers, he should like to see the man who would dare to counteract its motions! Let the nation thus move, said he, and show me the man who would dare to counteract it! The nation would not be wanting to do itself justice in such a case. Mr. R. had no doubt that there were witnesses, whom he had in his eye, who would refuse to give testimony; he hoped that the committee would imprison them, and coerce their evidence; and that the judge who would oppose it should also be made to feel their power. He had no notion of the action of the nation being impeded by these little obstacles.

One gentleman was afraid that if they adopted this resolution, they would support the slander that the Government wanted energy. If the Government wanted energy, said Mr. R., it was time that it should be asserted; if it had energy, they should redeem the nation from disgrace by displaying, by their conduct on this occasion, that the slander was unfounded. So that, take it either

way, this was no argument against the resolution. He had no idea of acting in this way; he hoped there was not a member of the House who was not satisfied of the propriety of the vote he would give, on better grounds than these; he hoped no member would be induced to vote against, or restrained from voting for the resolution by such observations as these.

Mr. R. did not know whether, according to the doctrine laid down by the same gentleman, (Mr. HOLLAND,) corruption would rally round this committee if appointed; or whether perjury was to resort to it for an asylum. He hoped, for the honor of the House and of the nation, for the honor of the Speaker, (for the committee were appointed by him on his responsibility, and as he was an old member, he hoped he could distinguish between those who were slanderers, and those who were not,) for the honor of the nation he hoped the gentleman's assertions were groundless; he hoped the body would be exculpated from such charges; but, if not, Mr. R. had no doubt that the Speaker, by a judicious choice, would secure the nation against those evils.

Mr. R. therefore hoped that the Congress of the United States would not declare that they had not the power to execute a purpose of this kind, in such a case as this; he hoped they would consider it as belonging to them by the Constitution, as a body possessed of the power to declare war and resist foreign corruption. The evidence before them related to an attempt of this kind. What, said Mr. R., would be the language of a foreign Court on hearing of a refusal by this House to inquire? "You dare not to inquire," would be their expression: "Spain is in your neighborhood, and you dare not to inquire." The result of the inquiry might be cause for war, if not for the rupture of treaties now pending. It would belong to this House to say whether it would make appropriations for fulfilling those treaties or not. This inquiry had already produced important evidence; he would not accept a treaty now, which he might have done before this evidence came out. In this point of view, then, this House had the power to make the inquiry. Upon principles of general reasoning, said Mr. R., every effort of a corporate body to preserve itself is legitimate; and, upon every view of the subject, with my feeble understanding, there is no doubt on my mind, but we possess the power of passing the resolution now upon our table.

The House now adjourned, without taking any question.

WEDNESDAY, January 13.

Mr. LEWIS, from the committee to whom was referred, on the second of November last, a memorial of Robert Peters and others, reported a bill authorizing the proprietors of squares and lots in the City of Washington, to have the same subdivided and admitted to record; which was read twice and committed to a Committee of the whole House on Friday next.

Mr. WILLIS ALSTON, from the committee to whom were referred, on the eighth instant, a written Message from the President of the United States, communicating a report of the Director of the Mint, with sundry accompanying documents, presented a bill to prolong the continuance of the Mint at Philadelphia; which was read twice and committed to a Committee of the whole House to-morrow.

Mr. JEREMIAH MORROW presented petitions of sundry purchasers of public lands within the State of Ohio, praying that such modification and amendment of the acts for the sale of lands belonging to the United States, may be made, as Congress, in their wisdom, shall deem reasonable and proper, to enable the petitioners and other settlers to make their payments without the losses to which they will otherwise be subjected.—Referred to the Committee on the Public Lands.

On motion of Mr. PARKE,

Resolved, That a committee be appointed to inquire into the expediency of extending the right of suffrage in the Indiana Territory, and that they have leave to report by bill, or otherwise.

Ordered, That Mr. PARKE, Mr. BARD, Mr. TAGGART, Mr. GARDNER, and Mr. SAWYER, be appointed a committee, pursuant to the said resolution.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act supplemental to an act, entitled 'An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee,'" with an amendment; to which they desire the concurrence of this House. The Senate have also passed the bill entitled "An act continuing in force, for a further time, the first section of an act, entitled 'An act further to protect the commerce and seamen of the United States against the Barbary Powers,'" with an amendment; to which they desire the concurrence of this House.

Mr. RHEA moved that the deposition laid on the table by Mr. Clark be printed. Agreed to.

GENERAL WILKINSON.

The House resumed the consideration of the resolution moved by Mr. ROWAN, as modified by an amendment proposed thereto by Mr. LOVE, which was depending yesterday at the time of adjournment.

Mr. W. ALSTON said, that the different parts of this resolution were now all combined in one, and stood upon that ground. He was of opinion that there was but one part of the resolution which ought to be adopted; and before he sat down he should move to strike out, after the word, "*Resolved*," the whole of the resolution, except that part relating to the transmission of these papers to the Executive, which had been introduced by the gentleman from Virginia, (Mr. LOVE;) the propriety of adopting which must be apparent to every one solicitous that a fair inquiry should take place into the conduct and character of General Wilkinson.

He had said, when up before, that if the object of raising this committee was to procure papers

or evidence, to be transmitted to the Executive, that this purpose would not be answered by it, but that it was better calculated to smother an inquiry than to promote it. He had heard nothing since (notwithstanding the long and laborious argument which he heard yesterday, and which would have been better delivered at the bar of a court than in this assembly) to change his opinion that it was better calculated to stifle an inquiry than to promote it. Have we not been told, said Mr. A., that if we raise a committee, and give them power to send for persons and papers, additional testimony may be adduced? What is the plain inference from this? That we must first denounce the character, then appoint a committee to examine into his conduct, and report "the result." When this committee shall have gone through an investigation, and may be about to report, if any individual should suggest that there were yet important evidence at Orleans or elsewhere, and should take upon himself to write for it, would the committee report while they had reason to expect additional testimony? While any man should be found to state that he knew of other testimony, would they report? They would not. Then, what becomes of this inquiry, which gentlemen consider so immediately important to the interests of the nation? The course pointed out by the resolution is the very course which gentlemen would pursue who wish the inquiry buried for a while, to leave the character of the man suspended.

The member from Kentucky has talked of the extreme delicacy of the gentleman from North Carolina. How did he mean to apply this observation? Is it extreme delicacy to say that every man should have a fair trial? This is the utmost extent of any observation which fell from me; and it is a sort of delicacy which I hope I shall always profess. A delicacy different from this the gentleman from Kentucky may, for me, exclusively possess. The gentleman from Kentucky has admired my ingenuity. Have I attempted to act the part of a cunning, subtle lawyer, here or anywhere else? His observation is applicable to lawyers only, and not to a plain farmer, possessing only language sufficient to convey his own ideas.

The gentleman seemed to feel another observation which fell from me. If he feels it, he may take it to himself, but I did not mean to apply it to him; for I was several days ago tired of this discussion, and should not now have said anything, had not the gentleman particularly directed his observations to the gentleman from North Carolina—meaning me, I suppose. The gentleman was particularly galled by the general charge of slandering individuals and clamoring against Government. I might have made use of the expression, but did not apply it particularly to any one, though all knew that such language had been held during the whole session. If the gentleman chooses to take it up, he is welcome to it; and though not meant for him, yet, from the sensibility which he has displayed on the occasion, it may perhaps attach to him.

The same honorable gentleman dwelt a considerable time on the subject of confidence—of blind confidence in the Executive. I am sure the gentleman did not then mean to apply his observation to me, although he said "The gentleman from North Carolina;" for I believe the whole course of my political life would have shown him that I hold confidence in none. I act from the dictates of my own judgment, independently of any man or set of men; but, if the course which I pursue is the course with which the nation is satisfied, it gives me pleasure. If the Administration of the country are pursuing a course which satisfies the nation, the members of that Administration, and those who support them, care little for the denunciations of any man or set of men.

The gentleman said that I preferred a military over a civil tribunal. Ought not things which are civil to belong to a civil tribunal, and military to a military—each within its own sphere? Can it be questioned? Now, take up the resolution on one ground on which the gentleman has placed it, and it may be adopted without violating the Constitution; but there could be no question as to the expediency of passing it on that ground, for not a man in the House believed it had been proposed for that object. The gentleman tells us that he believes that most of the evidence produced to the House has been long in possession of the Executive, and that, if we pass a resolution for inquiry, it may be found there. Taking it upon this ground, that it had been long in possession, no doubt the resolution for inquiry might be proper, in order to an impeachment. Although this has been stated, does any gentleman here believe that this is the object of the inquiry? If then the House be, as it must be, thoroughly convinced that an inquiry will produce no effect of this kind, wherefore adopt it? I can see no reason.

If this resolution were to be adopted on the ground which has been taken in the course of this discussion, it will lead to unavoidable and repeated difficulties. A proper constituted authority, having complete control over a certain subject, is about making an inquiry—the House institutes a committee, and sets it about the same inquiry. What individual under heaven can stand the shock of such an union of implied convictions of his guilt! Collect *exparte* testimony, on which to denounce a man, and however innocent that man may be, he must fall. I will illustrate my idea by a case almost before our eyes, and within the knowledge of all. John Smith, a Senator of the United States from the State of Ohio, is perhaps at this moment on his trial before the Senate of the United States. Had not a court of inquiry as full a right to investigate the conduct of General Wilkinson, a military commander, as the Senate has to investigate that of John Smith, one of their own members? It certainly has. Suppose a member of this House were to move a resolution for inquiry into the conduct of that Senator, for the same purpose for which an inquiry has actually been instituted by the Senate; should we not, in agreeing to such a resolution, as much assume a jurisdiction not belonging to us, precisely as we should by passing this resolution for inquiry by this House, while another at least equally competent authority has

actually taken cognisance of it? We certainly should. It is in consequence of these reflections and considerations that I think it fair and proper, when a character is held up to the nation, that he should have a fair, unbiassed trial before a competent tribunal, before this House undertakes, by instituting an inquiry, to stamp infamy on his character.

The gentleman from Kentucky tells us he is of no party. Why, this is rather strange, that an honorable gentleman of his ability and great talents should have lived so long in this country, where political parties are marshalled against each other, and that he alone has stood erect and firm. This may be a fact, and the gentleman's conduct may have proved it; but, for my part, I never yet saw two parties contending together, that I did not decide in my mind for one or the other. This straight course—neither inclining to one side nor the other—is a very honorable, but difficult path. The gentleman may get through it, but I very much question whether he does not evince, before he goes hence, that he is as strong a partisan as any gentleman on the floor.

The gentleman has told us that he is not a friend to Burrism, and refused to appear as counsel for him. This is honorable to him, but there was no occasion to tell the House of it. An honest man never wishes to cry out innocent, before he is charged with a crime. The course pursued on this occasion is not calculated to injure Col. Burr or his project. The self same course has been here pursued as at Richmond; and the present proceedings and discussion all have the same tendency. Was Aaron Burr tried there? No. A spectator of the proceeding would have believed General Wilkinson was on his trial, and that an inquiry was instituted into the conduct of the Chief Magistrate of the United States. The same argument and declamation are now used that were used there. Sink the Administration, sink Wilkinson, and Aaron Burr comes into power, and rises of course. Burr and Blannerhasset are gone to the Western country. Let gentlemen reflect upon the consequences to which their arguments will lead; that there is a desire at all events to crush the man. God forbid that I should charge any member on the floor. But such will be the effect on the public mind, and therefore I am opposed to the measures which are proposed; upon that ground, if upon no other, I would vote against them. Let the court of inquiry sit. Let us see the result of it, and then we may call for evidence if ample justice be not done. If any high character in the country is implicated let us apply the corrective. But, until then, let us sit here as the "grand inquest of the nation." Let us permit things to travel in their usual course.

Impressed with the propriety of negativing the main object of the resolution, Mr. A. moved to strike out all that part of it, except the part directing the transmission of papers to the Executive.

Mr. TAYLOR said, that when he had before spoken on this subject, (and the measure was not in the least altered by the amendments since made,) he had declared the measure to be an innovation, that they were about to establish a precedent which might in future times be productive of mischievous consequences. He knew that some gentlemen had instanced the case of St. Clair as a case in point; but, he believed, when considered, it would be found that the resolution on the table was directed to the man and not the subject generally: and if they compared the case cited as paramount or precedent to that now under consideration, it would be found totally inapplicable.

[He then read an extract from the Journals of a resolution by the House in which General St. Clair's name was used as descriptive of the action into which the resolution went to request an inquiry.]

The House would observe that in this case it was necessary that the name of Major General St. Clair should be used as descriptive of the subject-matter; but that there was nothing personal in the error or matter of the resolution. On this motion there was yeas and nays: so that the resolution upon the subject itself was lost.

[He then quoted the Journal, stating another motion to appoint a committee to inquire into the cause of the defeat of the late army under General St. Clair, which was adopted.]

Observe also the tenor of this resolution. The words Major General St. Clair were merely descriptive. The causes of the failure of the late expedition was the subject-matter of the resolution. So that this committee was not constituted for the purpose of trying or making inquiry into the conduct of Major General St. Clair, only as incidentally concerned, and he understood from those who were then members of Congress that the General was a witness on the subject. What had become of the result of this inquiry, Mr. T. could not say, for he had not been able to find it on the Journals—it was not yet ended. So that the position which he had before laid down, that this resolution authorizing an inquiry into the conduct of General Wilkinson was a new case, was correct, and it would therefore become a precedent.

He confessed that those who were opposed to him in opinion on this subject, had vastly the vantage-ground over him. The high sounding words "Commander-in-Chief of the Army of the United States," and the republican jealousy against standing armies, were weapons which these gentlemen had managed with great adroitness and dexterity; but he would ask, what was this mighty Army, about which the alarms and fears of the nation were attempted to be excited? About three thousand men, scattered over a frontier of one thousand eight hundred miles, commanded by a "Commander-in-Chief." If he might be allowed to make a comparison, he would instance a commander-in-chief in the State of South Carolina, who had command of a standing army consisting of fourteen men; this standing army and its commander had the charge of the arsenal near Charleston. *Cur rides? Mutato nomine fabula narratur de te.* The standing army which had been made use of as a bugbear to get at a particular character, could be tied hand and foot by the citizen soldiers of a single district in the State in

which Mr. T. resided. But it was a standing army; and gentleman had said, "Let the nation move"—for what? For three thousand men and a Brigadier General—to be sure the highest officer now in command—a sort of captain of the magazine guard. But if we should be called upon to have a standing army, which should act in a case of emergency, if the complexion of national affairs should demand it, was there any man so mad as to suppose that Brigadier General Wilkinson would be appointed Commander-in-Chief, unless perfectly cleared from the charges against him? Would not the Executive adopt the same principles in regard to the Commander-in-Chief which Cæsar did as to his wife, that she should not only be pure but unsuspected? Would he not examine whether Wilkinson was the sworn traitor as which he was denounced? Certainly he would; he could not avoid it.

Mr. T. said he had heard a speech on this subject from a very honorable, and he would swear, a very honest man, (Mr. Rowan,) which at first thought appeared to be entitled to great weight; but which, when the whole was taken together, appeared to have been a battle at random. The gentleman had seized upon the sword of public expedieney, and wielded it with a vengeance. "Let the nation move" was the language of the French Revolution. The gentleman has told us that the instances which I adduced did not apply; that these precedents were abuses, not uses, of the power. I wish they did not. But if there are no limits to our power, no landmarks to define our power, where shall we stop? I should fear to follow the sanguine, the hasty, the honest judgment of the gentleman himself? I suppose that the National Convention of France, when they denounced Marat, supposed that they had seized on a villain; he was denounced as General Wilkinson has been here, and what was the result of it? He slipped through their fingers. True it was, a female assassin put him out of the way, but the friends of that man rose up and denounced his very denunciators. Committees were appointed, as is now proposed, to inquire; their sittings were protracted, that popular fury might be excited, and newspaper fulminations might deprive the individual of a fair trial; they spun out the inquiry till the communes of Paris came to the door of the Convention, and demanded that the persons implicated in the inquiry should be punished. I have this morning heard of a transaction, which, at this day, has taken place, and placed the present procedure on all-fours with the errors of that day. I have learnt, that not satisfied with the supposed force and weight of the denunciations here, another respectable political body has taken up this subject, and I suppose are about to proceed to judge the man, to retorture his name extrajudicially in the same Capitol where, not long ago, it was done *secundum artem*. I ask if this case be not parallel to that of the communes of Paris; if it be not putting into practice the very principle I so much deprecate? It is alarming. What citizen shall be safe when the nation and the nation's strongest child shall move against him? Who shall obtain a fair trial with such weights as these against him?

[Mr. Burwell interrupted Mr. T. to explain. It appeared from the point of the gentleman's observations that he alluded to the Legislature of Virginia. He rather supposed the gentleman was mistaken in the course of measures which had there taken place. It was well known that a member could introduce what measure he pleases into a legislative body; but it did not follow that it would be adopted. He made this observation in justice to the Legislature of the State of which he was in part a Representative; and he must say that he thought the comparison of that body with the communes of Paris, or any other such body, was not justifiable.]

I have said, continued Mr. T., that the gentleman who has given us most information on the other side of the question, was acting honorably; that I believed he felt everything which he said, and that it was his duty to urge it, and so I will say likewise of the Legislature of the State of Virginia; but I will say that they are mistaken, and so will this House be if it adopts this resolution. I hope there is good sense enough in that Legislature and this House to stop at the threshold, before they do an act of which they will assuredly repent. I hope that if denunciations of public characters do take place here and elsewhere, through the mistaken zeal of individuals, yet that neither the Legislature of the United States nor of the State of Virginia will immolate the Constitution of their country.

The gentleman from Kentucky had gone on to show the expediency of using this two-edged sword—always used by despots to trample upon the rights of nations and individuals—this incidental power of self-preservation, and had proceeded till he got into a difficulty; had met with an impediment in his rapid course. What was it, and how did he overcome it? After having armed the committee, and supposed them to have taken out summons for persons and papers, when this committee would be about to encounter our Constitutional objections, the gentleman had exclaimed that he wished to see what individual would dare to resist their mandate. This was the very language used by Sandwich, Bute, and Halifax, in the case of the general warrant issued against John Wilkes, ordering his papers to be seized; and yet there was found a man in that nation as inferior as it is in the notions of liberty, there was found a man who dared to resist; and there was also found an enlightened jury and upright court, who applauded his resistance, and the nation itself went with them. The gentleman had denounced General Wilkinson for having seized upon persons and deprived them of their liberty; and yet, when this power was here objected to and suspected, what was his language? The gentleman wishes to see what man would dare to oppose it, and says, if a judge would dare to issue his writ of habeas corpus, he would march up to the Senate with him, and lay him by the heels. Gracious God! Talk of General Wilkinson's having violated the Constitution, and in the

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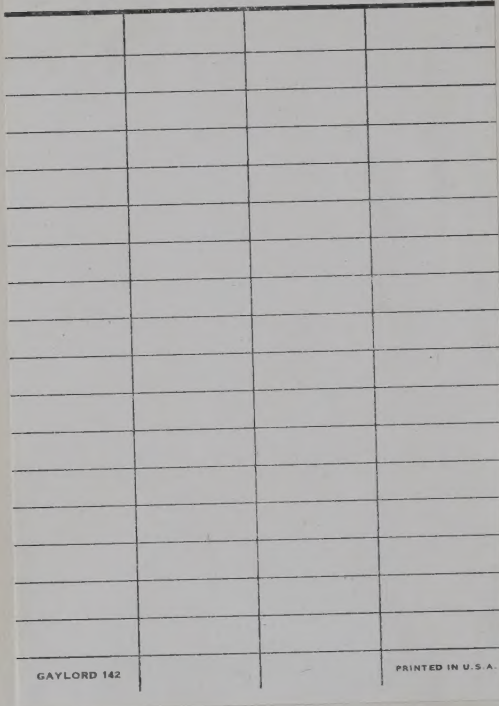

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